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ABSTRACT

This preliminary report of the Temporary State Commission on Child Welfare identifies problems and offers recommendations for improvement in the system of child welfare in New York State. Information about the Commission's mandate and members is followed by a review of the child welfare system in New York. The report indicates that the entire system manifests a lack of comprehensive coordination and meaningful accountability. Specific topics focused on are: preventive services, social services law section 358-a, judicial foster care status, termination of parental rights, adoption subsidy, statewide adoption exchange, and pending lawsuits. A discussion of each topic includes a review of the existing practices and the Commission's recommendations. Recommendations pertaining to the existing practices, statutes, and conditions affecting the care, custody and rights of minors are also included. Later sections discuss persons in need of supervision, and juvenile delinquency in some detail. Appendices include a copy of the legislation introduced at the request of the Commission as of May 1, 1975, and a list of public hearings held by the Commission. (CM)

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Children of the State

Children of the State I

THE CHILDREN OF THE STATE I

A Time For Change In Child Care

The Preliminary Report

of

The Temporary State Commission on Child Welfare

Senator Joseph R. Pisani
Chairman

May 1, 1975

Hon. Vincent A. Riccio
Vice Chairman

Mrs. Joyce Phillips Austin
Mrs. Joyce Black
Hon. John R. Dunne
Rev. John T. Fagan

Mrs. Margaret Glass
Mrs. Jean Gow
John P. Hale, Esq.
Hon. Donald Halperin
Hon. Howard A. Levine
Mr. Jacob L. Trobe
Karl D. Zukerman, Esq.

PS 009922



SENATOR JOSEPH R. PISANI
Chairman

THE TEMPORARY STATE COMMISSION
ON CHILD WELFARE

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May 1, 1975

TO THE GOVERNOR AND THE LEGISLATURE
OF THE STATE OF NEW YORK

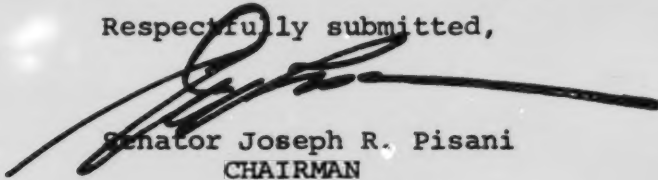
Pursuant to Chapter 1064 of the Laws of 1974, as amended by Chapter 29 of the Laws of 1975, I have the honor to transmit the Preliminary Report of the Temporary State Commission on Child Welfare.

I wish to express the Commission's high sense of appreciation for the unfailing cooperation which it has received from the Executive, Legislative and Judicial branches of our state government, as well as from local governments, and from organizations and individuals in the private sector.

This Preliminary Report summarizes the work of the Commission and looks forward to the unfinished business which the Commission has established as its goal during the second year.

It is the Commission's belief that the recommendations advanced herein, together with those which are now under study, will provide both a basis for substantial improvement in the existing child welfare system and a major re-orientation of child and family services toward the early detection and treatment of children's problems.

Respectfully submitted,



Senator Joseph R. Pisani
CHAIRMAN

CONTENTS

	Page
Letter of Transmittal.	i
The Temporary State Commission on Child Welfare.	1
The Commission's Mandate.	2
Members of the Commission	5
History of Child Welfare in New York.	14
The Problem.	18
Preventive Services.	21
Social Services Law, Section 358-a.	31
Judicial Review of Foster Care Status (Social Services Law, §392)	37
Termination of Parental Rights.	42
Adoption Subsidy.	50
Statewide Adoption Exchange.	52
Pending Lawsuits.	56
Further Recommendations and Considerations.	57
Persons In Need of Supervision.	63
Juvenile Delinquents.	82

CONTENTS

	Page
A Compendium of Child Welfare Laws.	103
Appendix A - Legislation Introduced at the Request of the Temporary State Commission on Child Welfare as of May 1, 1975.	106
Appendix B - Commission Hearings.	108

THE TEMPORARY STATE COMMISSION ON CHILD WELFARE

The Temporary State Commission on Child Welfare was created by Chapter 1064 of the Laws of 1974. As amended by Chapter 29 of the Laws of 1975, it has been directed to submit this preliminary report to the Governor and Legislature by May 1, 1975 and a final report not later than March 1, 1976.

Seven of the thirteen members of the Commission, including the Chairman, were appointed by the Governor. The Speaker of the Assembly and the Temporary President of the Senate named two members each, and the Minority Leaders of the two Chambers named one each. Although Chapter 1064 took effect in July, 1974, the appointment of a full complement of thirteen Commission members was not completed until the closing days of Governor Wilson's administration.

The Commission's Chairman, Senator Joseph R. Pisani, upon his appointment and designation in July, moved quickly to lay the groundwork for the Commission's role as an investigative and deliberative body by establishing an office at 270 Broadway in Manhattan and by recruiting key staff personnel.

A preliminary division of labor was established with the creation by the Chairman of two subcommittees - one chaired by Senator John R. Dunne with the assignment of studying the effectiveness of the PINS (Persons In Need of Supervision) system and a second chaired by Senator Donald M. Halperin to study the treatment of children adjudged to be Juvenile Delinquents.

The Honorable Vincent A. Riccio was named Vice Chairman of the Commission.

The Commission's Mandate

The Commission has been directed "to examine, evaluate and make recommendations concerning the scope, quality, cost and effectiveness of services now provided for children pursuant to existing legislation, judicial decisions and administrative policies". The Commission has been instructed to "review, with particular care, the impact of recent legislation and court decisions on the child care field".

The range of services to be scrutinized by the Commission will include preventive services, protective services and a variety of residential services, including foster care, group homes and institutional residences.

Seven major assignments have been conferred on the Commission by its statute which also makes clear that the Commission is not limited to these tasks.

Broadly speaking, these assignments can be broken down into four major subject areas:

1. Reviewing and making recommendations concerning current laws affecting children, including study of the need for a separate child welfare code which would consolidate the many scattered statutes affecting children.
2. Review of laws, practices and service delivery systems for troubled and troublesome minors, including those in the PINS category (Persons In Need of Supervision), juvenile delinquents and others requiring public attention.
3. Review of laws, practices and service delivery systems for children whose family status has been disrupted, whether

temporarily or permanently, including problems of foster care, adoption and services to children and their families.

4. Preventive services to children and their families.

It is no exaggeration to state that, except for the last item which is only incidentally and randomly available at present to families in New York State, the State's public policies and practices in these fields are in a state of flux, buffeted by the disruptive effects of court decisions, legislative interventions directed at segments of the social welfare system's structure and policies without much regard to their over-all impact, and the varied and often contrary impulses of public and private bureaucracies.

Basic questions to be considered by the Commission are profound both in their implications and their basic impact:

- Is the basic thrust of the existing child care system mistakenly directed toward the effects of family disruption rather than the causes?

- Can a viable and effective early detection system have an appreciable impact on the incidence of family disruption? If so, how is it to be constructed?

- Can the existing custodial-oriented child care system be re-directed toward preventive and restorative family services? If so, is it a relatively simple matter of providing fiscal incentives and eliminating disincentives? Or are the basic skills lacking in the existing agencies or in society at large?

- Should community-based alternatives be emphasized in correcting the anti-social tendencies of delinquent and pre-delinquent children?

- Is the practice of depriving children of liberty for offenses not punishable if committed by an adult in itself an unjustified intrusion on their constitutional rights?

- Have we permitted children to become entangled to their detriment in the existing apparatus of the judicial system?

- Is there a substantial wastage of public funds in the present child care system? Are we subsidizing, in some of its aspects, at least, a 'zero output' machine with little or no positive impact on the problems it is processing?

The questions are many. The definitive answers are few. What is clear is the inadequate and unacceptable performance of existing systems. The Commission's role is, by taking counsel with all helping disciplines, to proceed to the creation of new, or greatly modified, machinery. Indeed, those disciplines and dedicated public and private agencies have in the past demonstrated creativity in bringing about necessary changes and have demonstrated a willingness to cooperate in such a monumental task.

The Commission's effort to provide answers to these questions has been well launched.

While the bulk of the recommendations which we have already placed before the Legislature deal with administrative revision and more or less technical alterations of existing laws, these preliminary proposals will serve, we feel, to make the present machinery more humane and more effective.

The Commission intends now to proceed to more substantive study of existing conditions and to frame recommendations which will make New York State's avowed concern with child welfare a social reality.

Members of the Commission

JOSEPH R. PISANI
CHAIRMAN

Senator Joseph R. Pisani is a native of New Rochelle and attended its public schools. He is also a graduate of Iona College and Fordham University Law School. He pursued post-professional studies at the New York University Law School. He is married to the former Joan Marchiano and is the father of four children. During the Korean Conflict, he served on active duty as a Lieutenant in the U.S. Navy.

Professionally, he has been a senior partner in the Westchester law firm of Gaynor, Glick & Pisani since 1959 and is a member of leading bar organizations.

After serving in appointive and elective offices in New Rochelle, Senator Pisani was first elected to the State Legislature in 1965 as a State Assemblyman. He is now serving his sixth consecutive term as a member of the State Legislature and his second as a member of the State Senate. His impact on the legislative fields of foster care, adoption and preventive services to children and their families has already been extensive. He was both author and sponsor of many major laws enacted in recent years in these fields. Among these measures were the Pisani Review Act, mandating twenty-four month Family Court reviews of all pending foster care cases; the Foster Parents Preference Act, permitting qualified foster parents to adopt their foster children; the Baby Lenore Act, establishing a reasonable rule of finality in adoption cases; and many others. Senator Pisani was Chairman of the Legislature's 1974 New York State Conference on Children's Rights which proposed many advanced concepts which charted new territory to be explored more thoroughly in the years ahead.

VINCENT A. RICCIO
VICE CHAIRMAN

A member of the New York State Assembly from Kings County for three terms, Vice Chairman Riccio brings to the Commission a wealth of professional training and experience in dealing with the problems of children.

An amateur boxing champion in his youth (winner of the 1939 World's Fair 145lb. title), he went on to earn a B.S. in physical education from Long Island University and an M.S. from Columbia University Teachers College. Mr. Riccio was a teacher, varsity coach and Dean of Boys at John Jay High School in Brooklyn and became a pioneer member of the New York City Youth Board as a Senior Street Gang Worker in the Council of Social and Athletic Clubs.

His experiences in these areas have been the subject of articles and scripts by Arthur Miller and screen writer Walter Bernstein and earned him national recognition in drug abuse, juvenile delinquency and youth problems. He was co-author of the book All The Way Down (Simon & Schuster), a sociological study of street gangs and juvenile delinquency.

MRS. JOYCE PHILLIPS AUSTIN

A career that has combined law, government and social welfare led to Joyce Phillips Austin's appointment as Executive Vice President of the Federation of Protestant Welfare Agencies on March 1, 1975. She had previously served as Assistant Director of Sheltering Arms Childrens Service.

Mrs. Austin has also held positions as executive assistant to the Regional Director of the Northeast Regional Office of the Federal Office of Economic Opportunity, as assistant to former New York City Mayor Robert

Wagner and as Assistant Deputy Commissioner of the New York Department of Commerce.

She is a graduate of Hunter College of the City University and of Fordham University Law School. She serves on the Boards of several social agencies and is a member of many community and professional organizations.

MRS. JOYCE M. BLACK

Mrs. Joyce M. Black is President of the Day Care Council of New York, Chairman of the New York State Advisory Committee on Day Care, Chairman of the Resource Review Board of the New York City Human Resources Administration and a member of the Child Welfare Council in New York City.

An alumna of Skidmore College, she was a recipient of its Outstanding Alumnae Award. Mrs. Black is listed in "Who's Who in American Women" and holds the Mayoral Award for Outstanding Volunteer Service and the New York Medical Society Outstanding Citizen Award.

She was the first woman to be appointed to be named to the Board of Trustees of the Banking Board of America and to the New York State Banking Board and was the first woman Trustee of New York University Medical Center. She is also a member of the Board of the Child Welfare League of America.

SENATOR JOHN R. DUNNE

Senator John R. Dunne serves the Temporary State Commission on Child Welfare in two capacities: as a member and as Chairman of its Subcommittee on Persons In Need of Supervision (PINS).

A legislative leader in the fields of family, youth and crime problems, Senator Dunne also serves as Chairman of the Senate Judiciary Committee's Subcommittee to Study the Family Court Systems and as a

charter member of the Temporary State Commission to Evaluate the New York State Drug Laws. He was a member of the Joint Legislative Committee on Children and Youth and Drug Abuse and the Temporary State Commission to Revise the Penal Law and Criminal Code.

He is a graduate of Georgetown University and Yale Law School and has been a member of the State Senate since 1965. A resident of Garden City, L.I., he is married to the former Denise Maher and is the father of four children.

REV. JOHN T. FAGAN

Father John Fagan is the Executive Vice President of Little Flower Children's Services of Wading River, L.I. A Brooklyn native, he studied at Cathedral College and Immaculate Conception Seminary at Huntington prior to his ordination to the priesthood in 1952. After seven years of parish duty, he was named Executive Director of Little Flower in 1959 and became Executive Vice President ten years later. He was also Associate Director of Child Care of Brooklyn Catholic Charities from 1959 to 1972 and acting Executive Director of St. John's Home For Adolescent Boys in Rockaway during 1971-72.

Father Fagan possesses a graduate degree in psychiatric social work from Fordham University.

He was a Founding Member of the Board of the Council of Voluntary Child Care Agencies in 1967 and also served on the Board of the Association of Child Care Agencies of New York State.

MRS. MARGARET K. GLASS

Margaret K. Glass is one of the leading pioneers in organized child welfare work in Western New York. She served in the Bureau of Child Welfare

of the Erie County Department of Social Services from 1954 to 1974 and as Director of that Bureau from 1967. She initiated protection service for children known to or active with the Department and expanded the protection service until, by 1970, protection for all children in Erie County had become the responsibility of her agency.

Among the policies which she instituted over the years were twenty-four hour response to every complaint, a ban on closing child protection cases before a responsible caseworker had actually seen and verified the child's welfare, and the establishment of a close working relationship with all hospitals and school districts in Erie County for the purpose of early recognition of children in need of protective services.

MRS. JEAN GOW

Mrs. Jean Gow is a concerned citizen. She was a member of the Broome County Charter Commission and led a ten year campaign for the adoption of a County Charter. She is a past President of the Broome County League of Women Voters and an active League member for more than twenty years. Mrs. Gow is presently a member of the Citizens Advisory Committee on Services of the Broome County Department of Social Services, a budget panel of the United Way and is a Deacon of the Northminster Presbyterian Church of Endwell, New York.

A native of Cleveland, Ohio, Mrs. Gow was graduated from the College of Wooster (Ohio) and holds a graduate degree from the New York State School of Industrial and Labor Relations at Cornell University. She resides in Endwell with her husband, James, who is a partner in the law firm of Leasure, Gow and Munk. The Gows have two daughters, Andrea and Diane.

JOHN P. HALE, ESQ.

John P. Hale is a practicing attorney in New York City and a member of the law firm of Hale & Russell.

Mr. Hale was a member of the New York City Youth Board from 1961 to 1964. He was thereafter appointed to the New York State Board of Social Welfare where he served for the statutory period of ten years. During his term on the Board, he was Chairman of its Rules Committee and Chairman of the Committee on Children's Shelters.

He is a member of the Boards of several child care agencies, a Trustee of St. John's University and a member of local and State bar associations for which he has held various committee assignments dealing with the Family Court and the judiciary.

Mr. Hale resides in Larchmont, N.Y. with his wife, Jule, and two teenage daughters.

SENATOR DONALD M. HALPERIN

Senator Donald M. Halperin, the youngest member ever to be elected to the State Senate, is both a member of this Commission and Chairman of its Subcommittee on Juvenile Delinquents. He was first elected to the Senate in 1970. He is a graduate of Rutgers University and Brooklyn Law School. He is an associate of the law firm of Fuchsberg & Fuchsberg in New York City and lives in Brooklyn with his wife, the former Brenda Stibel. He is a member of leading bar associations and holds leadership positions with a number of community organizations and charitable groups. He is Chairman of the Committee on American Youth Involvement and a member of the Advisory Board of the Harlem School for children who are emotionally disturbed or suffer from learning disabilities.

He is ranking minority member of the Senate Conservation, Recreation

and Environment Committee and also serves on the Committees on Mental Hygiene and Addiction Control; Rules; Corporations, Authorities and Public Utilities; and Higher Education.

JUDGE HOWARD A. LEVINE

The Hon. Howard A. Levine, Family Court Judge of Schenectady County, has a long and distinguished record at the Bar, in public office and on the Bench.

A graduate of Yale University and its Law School, he was admitted to the New York Bar in 1956. After a year as a graduate assistant at Yale Law, he entered private practice in New York City and then in Schenectady. He served as an Assistant District Attorney of Schenectady County from 1961 to 1966 and as District Attorney from 1967 to 1970. In 1971, he attained his present position.

Judge Levine is Chairman of the Legislative Committee of the Association of Family Court Judges of the State of New York. He is also a member of the New York State Bar Association, a Lecturer in Family Law at the Albany Law School, a member of both the Advisory Committee on Standards of Payment for Foster Care and the Advisory Committee on Adoption of the New York State Department of Social Services and a member of the Judicial Conference Rules and Advisory Committee on the Family Court.

His community activities include membership on the Board of Directors of the Schenectady County Child Guidance Center, the Carver Community Center and the Freedom Forum.

Judge Levine is married and the father of three children.

JACOB L. TROBE

Jacob L. Trobe is a veteran leader in the field of public and

private philanthropy, with emphasis on child care.

He is currently Executive Vice President of the Jewish Child Care Association of New York and a member of the Board of Directors of the American Parents Committee and the New York State Council of Voluntary Child Care Agencies. Mr. Trobe is listed in 'Who's Who in America'.

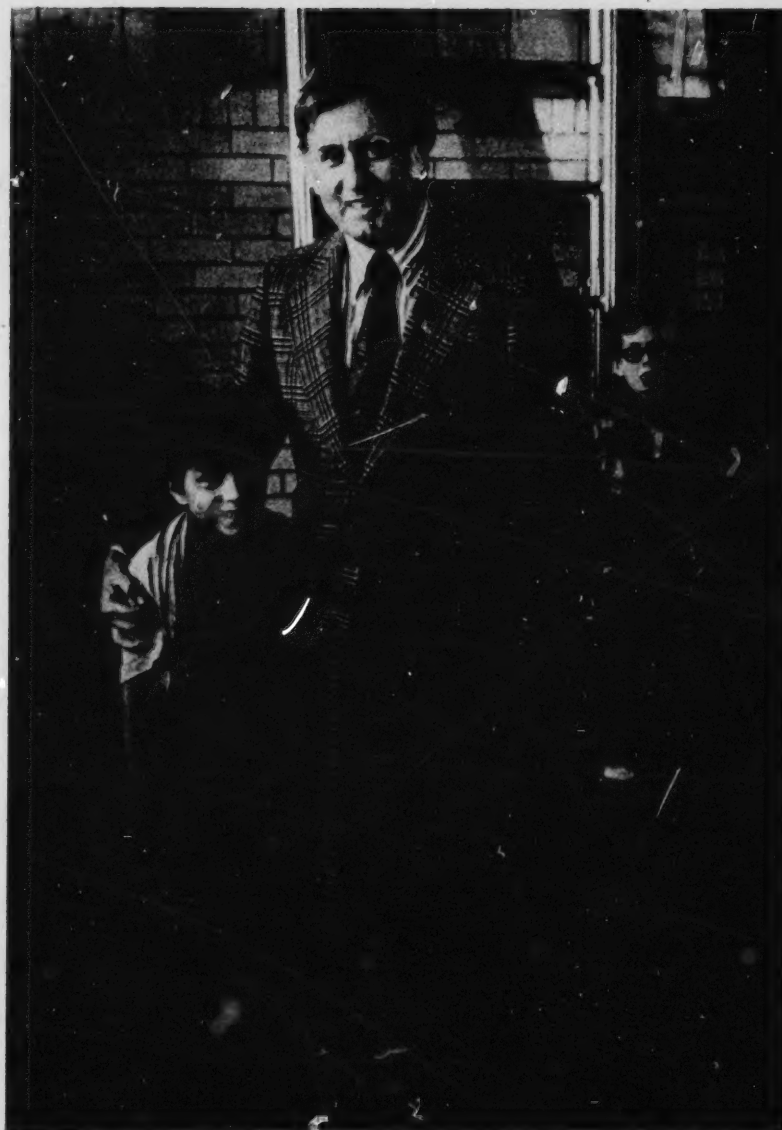
His earlier activities constitute a roster, spanning a generation, of the foremost needs of the persecuted, the war victim and the needy child. He was a member of the Committee on Public-Voluntary Agency Relationships which developed 'A National Program for Comprehensive Child Welfare Services' from 1968 to 1970, Associate Executive Director of the Jewish Board of Guardians from 1952 to 1961, Director of Rescue, Relief and Rehabilitation Missions of the American Jewish Joint Distribution Committee in Germany, Italy and Libya from 1944 to 1948, member of a Special Mission to Vietnam on the needs of war refugees in 1968, member of the CBS Task Force on the New York Child Care Problem in 1968, Chairman of the New Jersey Technical Committee for the 1940 White House Conference on Children and Vice President of the New Jersey Welfare Council from 1949 to 1951.

KARL D. ZUKERMAN, ESQ.

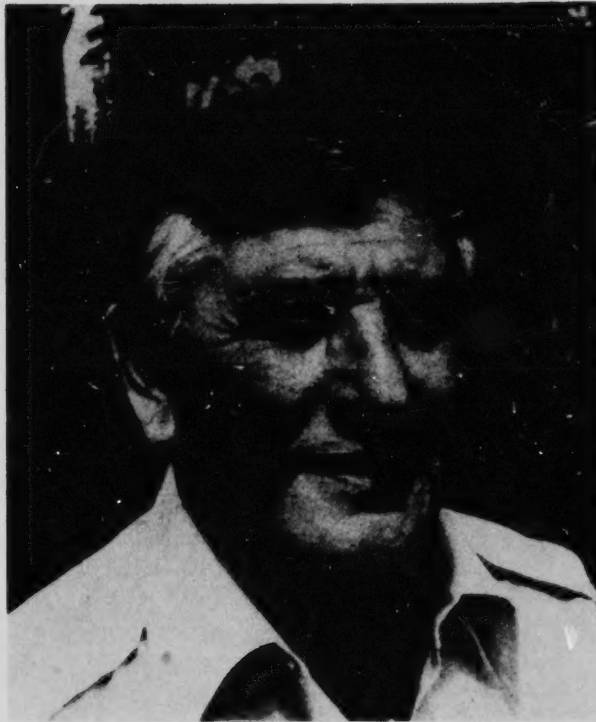
Karl D. Zukerman, an attorney, is Consultant on Government Relations for the Federation of Jewish Philanthropies. He was previously general counsel to the New York City Department of Social Services and Public Affairs Counsel for the Community Service Society.

He is a member of the National Executive Board of the Workmen's Circle and of the Board of Directors of the Home Advisory & Service Council of New York, Inc. Mr. Zukerman is also an Adjunct Assistant Professor at the Fordham University Graduate School of Social Services.

Mr. Zukerman is a graduate of Cornell University and the New York University Law School. He and his wife, Sari, are the parents of two daughters.



Senator Joseph R. Pisani, Chairman



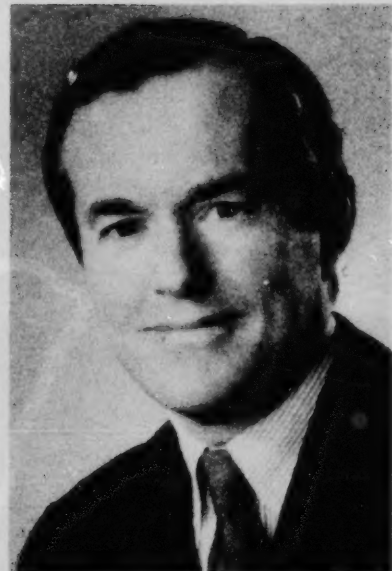
Hon. Vincent A. Riccio, Vice Chairman



Mrs. Joyce Phillips Austin



Mrs. Joyce Black



Hon. John R. Dunne



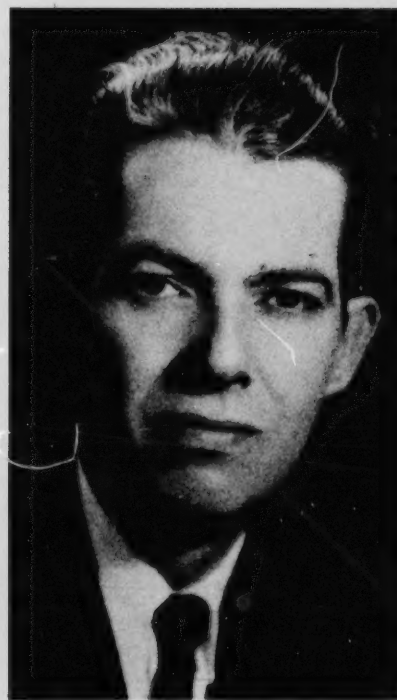
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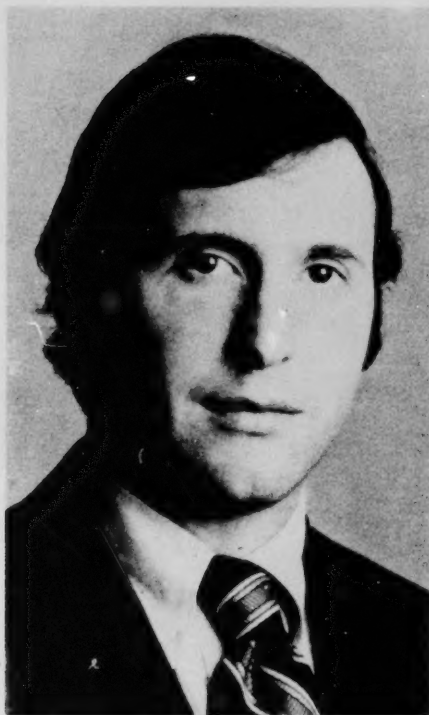
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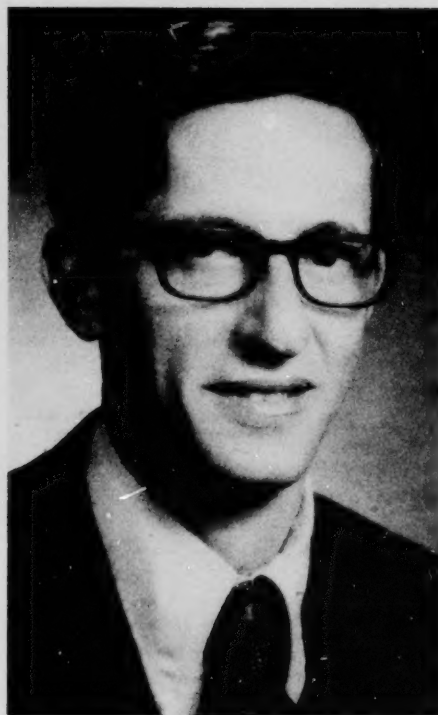
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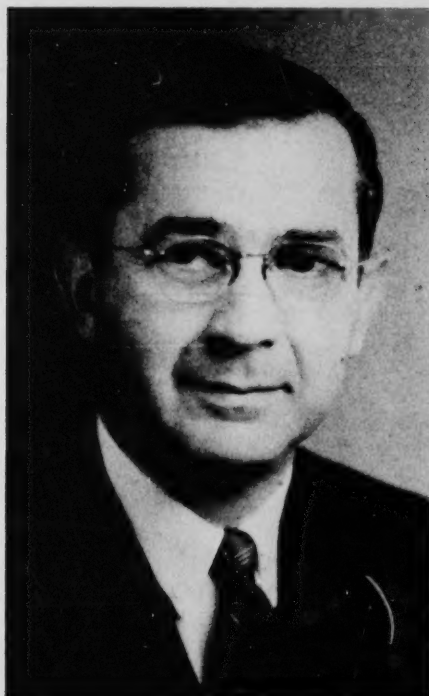
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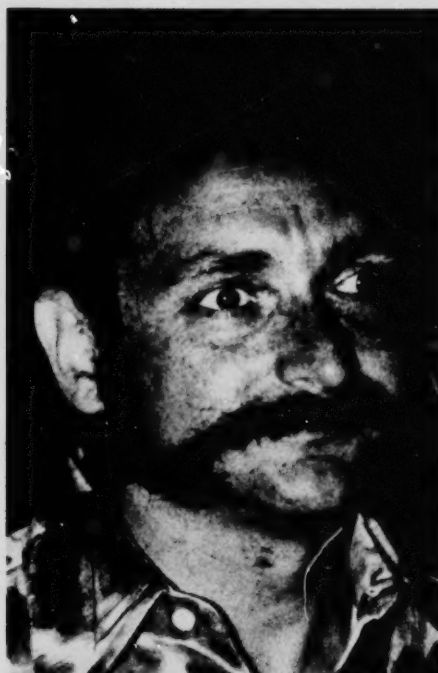
Hon. Donald Halperin



Hon. Howard A. Levine



Mr. Jacob L. Trobe



Karl D. Zukerman, Esq.

HISTORY OF CHILD WELFARE IN NEW YORK

The history of child welfare in New York State reflects the changing views of children's and parents' rights which have evolved in the course of more than three centuries. It reflects also the development of the modern concept of adoption, the attitudes and problems of the waves of immigrants which have successively settled in New York, and the continuing evolution of society's basic unit away from the extended family and toward the more-or-less nuclear family which predominates today.

History records that, as early as 1654, children were being shipped from the charitable institutions of Holland to the small Dutch Colony of New Netherlands as indentured servants, bound out to a prospective master's household where, in return for obedience and labor, each child-servant would be entitled to quasi-membership in the master's family and such vocational training and practical education as the master might see fit to give.

This system, reflected also in the provisions of the Elizabethan "Poor Laws," which formed the basis of most pertinent Colonial statutes in the Colony of New York, was the inherited dominant form of child care when the State of New York succeeded the Colony.

This transferability of children, virtually without recourse, from parent to master, was an inheritance of classical antiquity and its Roman Law which viewed a child as the property of its father who held the literal and unquestioned power of life and death.

This system of indenture enjoyed, in the eyes of contemporaries, two complementary advantages - it provided for needy children at no expense to the public, and it offered a cheap source of labor and training program for

craftsmen to the employer and master.

Adoption, as such, was unknown and unheard of except as a custom of the classical period by which an older adult adopted a younger adult as a means of perpetuating the family line. With the fall of the Roman Empire the adoption process virtually disappeared until the early 19th Century when the Napoleonic Code was instituted. That Code and the adoption laws of all European countries influenced by it was not concerned with the interests of the adoptee but with inheritance rights. In fact, it was not until 1925 that the Code Napoleon was amended to permit the adoption of minors - a reflection of the needs of the many orphans and illegitimate children resulting from World War I. Adoption based on the needs and interests of children, however, is a uniquely American institution which first was established in Massachusetts in the 1850's. It was not established in New York until 1873.

The system of indenture applied not only to orphans but also to the children of living parents who might choose to "bind" them to another person for a period of years or until maturity.

The coming of the Industrial Revolution and the growing social conscience which ameliorated its excesses led to the knell of the indenture system, as well as most of the more harmful forms of child labor, although the practice of child indenture continued to find legislative warrant in the Laws of 1875 (Chapter 522) and the Laws of 1878 (Chapter 112).

Aid to the family, during the 19th Century, took two dominant forms which also reflected English antecedents, "Outdoor relief" (which we would identify today as a precursor of the familiar Welfare System) was provided by towns to destitute families in their own homes. The system, seen as a dangerous example of idleness to the working poor, was decried by molders

of public opinion. Frequently, the children of "outdoor relief" families were taken from their parents and consigned to "almshouses" of various kinds where, it was hoped, they would learn the habit of industriousness. Often, the "almshouse" or "poorhouse" would also become the residence of the family itself. Here, it was thought, idleness was punished, as it deserved to be in a society devoted to the so-called "Puritan" or "work" ethic.

By the latter half of the 19th Century, the "almshouse" approach to child welfare had fallen into deserved disrepute, and the practice of "placing-out" children - generally in rural areas and often out-of-State - had largely replaced it. The placing-out practice was endorsed by many social thinkers and religious leaders and, in many cases, led to good results and a secure, (if informal) family status for the young emigres.

Unfortunately, the very informality of the placing-out method encouraged the worst abuses imaginable - conscienceless exploitation, abandonment, utter lack of education and brutality. The practice was also used as a method of what a later age would describe as 'cultural genocide' against the children of unpopular immigrant communities.

This period, commencing haltingly during the 18th Century and at an accelerated pace during the 19th, saw the growth of benevolent institutions dedicated to the upbringing of orphans and destitute children.

By 1800, eight such institutions had been established in the United States. Eighteen more had been founded by 1824, and, by 1850, the number was well over a hundred - many of them in New York. A number of these early orphanages were the results of local disasters or epidemics; many others were established on a sectarian, as well as charitable, impulse. Some were devoted to particular ethnic groups or as segregated

institutions for Black children.

The cause of protection for the neglected or abused child found its first institutional expression with the foundation of the Society for the Prevention of Cruelty to Children (an outgrowth, ironically, of the pre-existing Society for the Prevention of Cruelty to Animals) in 1875.

Historically, New York State has tended to entrust the care of dependent or neglected children outside the home to private agencies receiving public subsidies.

Foster care, in New York, has become the dominant mode of accommodating children whose family ties still nominally exist but who cannot, or will not, be cared for in their parental home, and new forms of foster care, such as agency boarding homes and group homes, have been developed. Institutionalization, once the predominant form of foster care, is generally reserved for those children whose behavior makes them ineligible for normal foster home care or whose other handicaps present too severe a problem for the normal foster parent or couple. Even in these cases, however, the use of especially selected and well-trained foster parents is on the increase.

Contemporary developments in the field of child welfare are discussed elsewhere in this Report.

THE PROBLEM

The field of child welfare, and, in particular, those areas which have been entrusted to the Commission's review, is one of great complexity.

In New York State we find that a century-old web of laws, agencies and institutions has involved hundreds of thousands of children and their families within a social service fabric that has developed in a manner both intricate and disjointed, benevolent in its conception and intentions but, in many ways, ineffective and counter-productive in results.

It is a system which historically has grown and diversified with little forethought or logic - a blending of private and public agencies, often cooperating, sometimes competing, more often functioning more or less independently, and sharing two characteristics: a mission in one or more areas of child welfare and a common umbilical dependence (total or preponderant) on the public treasury.

This system functions under the authority of laws which were originally written mainly to ratify and subsidize the work of privately-funded charities. In those cases where the laws of the State have made significant alterations in the existing system, they have most often done so on a patch-work basis - sometimes to conform with requirements for Federal funding and at other times only to correct the more flagrant abuses as they come to light.

REGRETTABLY, THE ENTIRE SYSTEM MANIFESTS A LACK OF COMPREHENSIVE COORDINATION AND MEANINGFUL ACCOUNTABILITY! WE INTEND TO FOCUS ON THIS LACK.

Insofar as any orientation can be attributed to it, it is almost entirely directed toward the retrieval of disasters rather than their prevention. And even its record in the former category suggests that the remedies it provides are often worse than the diseases they purport to

treat.

The most helpless subjects of this system at present are overwhelmingly the members of the most vulnerable social category of American society - the children of the urban poor. Yet the underlying problems which the Commission has under review afflict young people and their families in all social and economic classes, in every area of the State, and of all races and creeds.

Fairness dictates the acknowledgment that the authors and perpetrators of this system were and are not merely decent but high-minded, that lofty religious and humanitarian ideals provide the major motivating force for them and for the agencies and institutions which employ them. Their role is that of players in an improvised and unplotted tragedy which lacks both an author and a director.

Justice also compels us to point out that the professional personnel engaged in the child welfare system compare favorably, both in skill and motivation, with their peers in other fields. Their salient fault (if fault it be) is their human inability to impose coherence and purpose on the system of which they are a part - a fault shared by prelates and wise men, by Legislatures, Courts and Governor, and by the people themselves whose delegated powers have been used too often to banish the truant and the street urchin, rather than to banish or prevent their problems, to find a shelter rather than a home for the homeless child, and to submit the most delicate of human and family relationships to the strict arbitrament of human justice rather than the enlightened warmth of human compassion.

It is important to point out with great emphasis that what we have said about New York State could probably be said with equal, or even greater, justice about every other State in the Union. What we propose to recommend in New York will, we hope, have reverberations in every other American

state. The Commission believes that if American society is serious in its intention to salvage the lives and prospects of those of its children who are most seriously at risk, a new beginning must be made, making use of resources old and new under a clear and coherent plan.

The Temporary State Commission on Child Welfare is fortunate to be able to begin this process in New York State where the institutions, the attitudinal breakthroughs and the personnel to be deployed in this effort are already at hand and where some significant beginnings toward reform have already been successfully launched.

PREVENTIVE SERVICES

The temporary placement of a child at public expense, in a home or institution other than the child's own family home is a common experience in the lives of the poor in New York City and throughout New York State.

The children so placed are generally drawn from the homes of the most dependent and socially isolated families - those who, even on a short-term basis, are unable to find a parent, or brother or sister, or a close friend who would be willing, able and reliable enough to accommodate one or more children.

Prospective foster children, as might be expected, tend to be the products of single-parent homes. They tend to be Black, Hispanic or of other minority ethnic background. Otherwise, they tend to be drawn from the poorest and least organized elements of the white population.

Typically, the family situation in which they are being reared is one beset with difficulties - internal or external. One or both parents (where two functionally exist as such) may suffer from chronic ill health - mental or physical - from drug addiction or alcoholism, or from any of a litany of economic or social problems.

Foster care is not generally a middle class phenomenon.

The foster child, then, is usually the product and the victim of traumatizing emotional or social circumstances even before his journey into the care of the State has begun.

Let it be said at the outset that the circumstances in which a child and a family find themselves at the point where foster care begins sometimes scarcely admit of any other practical solution. There are many

alternative fates which can befall the child and the family to which foster care is infinitely preferable. And the people of this State, who underwrite the process financially, have good cause to be grateful for the availability of good foster care and the supportive services which its sponsoring agencies maintain. They are operated and staffed, with negligible exceptions, by earnest, capable and altruistic people whose skillful and often successful efforts have earned them the gratitude of many of their former charges.

Yet, viewing the foster care system as whole, it must be said that, except in emergency situations where a very limited stay in care is contemplated, or, perhaps, as a stable and long-term solution for the older child of a vanished home, foster care is, in itself, an imperfect response to family disaster and societal neglect. It is, therefore, an admission of defeat - sometimes inevitable but often preventable.

For the already traumatized child who experiences it, to enter foster care is to enter a world of insecurity, where the love, protection and familiarity of home surroundings (however deficient and even shocking to the eyes of the middle class) are replaced by a new environment in another, unfamiliar and therefore threatening world. Swept by mysterious and impersonal forces from his own accustomed world, oppressed by feelings of guilt at his sudden expulsion from familiar surroundings, the child feels himself an outcast and reacts according to his natural bent.

Professional skill, judiciously exercised, and careful fostering can minimize this damage and ease the pain, but they cannot blot it out.

The State, predictably, has been unable to devise a substitute for home. Nor can it be expected to.

The consequences of this inevitable and entirely unculpable

shortcoming are nevertheless very often disastrous.

A recent study by the Office of Children's Services of the former New York State Judicial Conference suggests that one-third of a group of PINS children in New York City had previously been in foster care or other placement prior to the filing of the PINS petition. Add to this the unknown total of foster children and former foster children who have escaped the notice of the PINS system for reasons other than their own good behavior.

There are also strong indications, as might be expected, that foster children are more likely to be academic under-achievers.

They are, of course, more likely to become emotionally unstable and mentally ill.

It would be wrong to charge the institution of foster care with the full responsibility for these results. The children who enter its system tend, as previously noted, to be already traumatized. Yet it would be absurd to contend that foster care, by its very circumstances, does not promote these tendencies to a significant degree.

The scale of foster care in New York State is immense. Some 50,000 children in the State, about 30,000 of them in New York City, are at this moment in care outside their own homes. Tomorrow a few of them may be adopted or back home. One thing is certain: thousands of them come into care each year as additional thousands of families break apart. These numbers of children, of course, do not include those who may be in protective or therapeutic custody for what might be regarded as purely personal causes - as a result of unacceptable behavior (PINS) or for the commission of acts which, in an adult, would be regarded as crimes (Juvenile Delinquents) or for diagnosed mental illnesses. All of these additional thousands of

children share with foster children the common characteristic of being "troubled" and of dwelling, in forced residence, away from their natural homes.

The care of these children, in all of its aspects, is, by any definition, a major industry. Thousands upon thousands of New Yorkers find employment in the acquisition, processing, administration, treatment, sheltering, feeding and protection of these children. Its tendency is to grow.

The Commission will propose to terminate its growth, in its present form, and to re-direct the industry's formidable array of talented and compassionate professionals and other workers into related spheres of activity of a more beneficial nature. Abundant evidence exists that the child care industry is ready to prepare itself for the change.

The industry, generally troubled by its present position, can say with much truth that government - Federal, State and local - has encouraged it, by obsolete laws, prohibitive fiscal disincentives and sheer bureaucratic inertia, to apply 19th Century philosophy to 20th Century children and their families.

Wherever the fault may lie, it is self-evident, in the Commission's view, that the hour is at hand for careful but massive re-direction of the child care industry toward preventive services for children and their families. Foster care and other forms of away-from-home residential treatment will never cease to be used as a last resort for many children. But they must cease, in the shortest time possible, to enjoy their present status as an almost knee-jerk reaction to threatening family crises.

The normal and optimal site where breaking families and those approaching dissolution must be treated is in the home, on the block, and in the neighborhood - with minimal disruption of their familiar environment.

The essential pre-conditions for such a system include, first of all, an effective apparatus for detecting the onset of severe family problems - a network of antennae which will discover and set on the path of treatment those personal and family problems which, if unremedied, will wreck a home and destroy or warp a child's normal development.

This early-detection network must utilize existing community resources or those for which the community ingredients are already at hand. They must (if they are to be accepted) be familiar and indigenous - part of the warp and woof of the community tapestry. They must be perceived by those who may become their clients as helpful neighbors - not authoritative outsiders. The prompt availability of timely, neighborly and unobtrusive help is the key.

Services, once the family has already disintegrated are, to be sure, better than no services at all, and certainly better than the assumption that the child should go into foster care placement. We believe, however, that support services should be available to the entire family as soon as it is known that the need is there. To put it another way, as soon as symptoms of family dysfunction are visible, the family should be offered appropriate services to help it resolve its difficulties. This very broad, early outreach would catch many problems before they develop to the point of breakdown.

It is to be noted, with emphasis, that it must be the intention of an effective preventive services system to reach far more families

and far more children than are now a part of the foster care and institutional population. Family crises do not always eventuate in foster care or institutionalization for the children of the house. Indeed, in many cases, it would be a lesser evil if they did. Tens of thousands of families hang together in "quiet desperation" and - far from seeking out - resolutely avoid the ministrations of public and private agencies. Our present system of services detects and treats only some of the more egregious cases of family disorders.

Contemplating the inevitably vast increase in the number of families and individuals who would be reached by an effective network of preventive services, the question of whether we, as a society, can afford the expense must arise.

We mention, for the moment, only in passing, the obvious response that, if we cannot afford the expense of detection and treatment, then a fortiori we can even less 'afford' the inevitable human victims of our failure who terrorize our homes and public places, overcrowd our criminal justice system and psychiatric centers, loiter in our Skid Rows and addict-hang-outs or provide hundreds of thousands of the clients for our welfare system.

It can be confidently stated that, even leaving aside these consequences of continued neglect, the cost of an effective system of preventive services, properly organized and with strong community roots, will not exceed and will probably be significantly less expensive in toto than the present foster care and institutional care system - even assuming substantial continuing recourse to these latter modes of human treatment and storage.

The New York State Department of Social Services estimated in 1973 that the average cost of intensive preventive casework services would be a

little more than one thousand dollars a year per child. By comparison, simple foster care costs, at that time, averaged slightly over \$6,000 in New York City and over \$5,000 Statewide. Institutional foster care averages about \$12,000 per year and may run as high as \$25,000 or more a year per child.

Where does preventive services stand in New York State at the present time?

Until now the State's commitment to this goal has been miniscule. In 1972 the Legislature enacted Chapter 403 which amended the Social Services Law (Section 398.6(n) to authorize local social services officials to provide intensive family casework services to prevent the placement of children in foster care. Such services may be provided directly or, with the approval of the State Commissioner of Social Services, may be purchased from any agency authorized by Department regulations to provide such casework services to children. However, the law authorizes the provision of these services only when the Director of the Division of the Budget certifies that Federal aid is available. The Commission observes that such aid is now available only with respect to AFDC - eligible children and to former and potential recipients, pursuant to Title IV-A of the Social Security Act, and only to the extent of a monetary ceiling placed upon such services funds by Congress - a ceiling which has already been reached in New York State. The law also narrowly limits the provision of intensive family casework services to situations where the local social services official has found that the child will be placed in foster care unless such services are provided.

The only other commitment of the State to the concept of preventive services was represented by Chapter 911 of the Laws of 1973 which appropriated \$500,000 for the operation of two-year demonstration projects

including intensive family casework services designed to preserve family units and to prevent need for substitute care or placement of children. Such services were to be provided only after social services officials had found that the child would be placed in foster care in the absence of the preventive service. (In other words, it was reserved for the most desperate cases). The Commission has been informed that the project periods to be evaluated ended, in New York City, on March 31, 1975 and, in Monroe and Westchester Counties, on April 30, 1975. Services, however, will continue to be provided for client families until July 31. The final evaluation of the projects by the Child Welfare League of America is due in January, 1976. Preliminary findings appear to prove exactly what the projects were expected to demonstrate. For example, in the Westchester County Department of Social Services project, 60 cases involving 159 children resulted after nine months in only four children having to be placed in foster care. The average cost per child for nine months of preventive services was \$1,715, and the average foster care cost for such period would have been \$2,767 in nine months - a demonstrated saving of \$1,052 per child. Of course, the social and emotional values derived from the prevention of family disintegration and the benefits of the long-term consequences are incalculable.

The Commission was favorably impressed by the success of local preventive services projects, undertaken by social services agencies in Binghamton, Syracuse and New York City on their own initiative, which were the subject of testimony at our public hearings in those localities. It is regrettable that the lack of a State reimbursement formula jeopardizes the continuation and expansion of such programs.

The Commission believes it is now time for the State to take the next logical step in moving from demonstration project to an on-going

Statewide program of preventive services. The point has been made; human and fiscal benefits of such services have been demonstrated.

Any discussion of preventive services would be incomplete without mention of "day treatment" or "day services." Day treatment is a program for children provided for part of the day and includes the provision of various services, including psychiatric, psychological, social casework, educational, vocational and recreational. It is designed as a means of preventing foster care and also as a means of enabling a child to leave foster care at an earlier date and return to his parents. Traditional services for children have been limited to office and clinical visits, (and if more than one type of service is required, the offices are usually located physically separate), foster care involving total removal of the child from his home and community and day care which is more limited in the scope of services available. Day treatment presents the advantage of the child remaining at home with a multiplicity of available, needed services. The program would be of particular benefit to children who are presently in foster care or who would need foster care without supportive family service and therapy - children manifesting delinquent or pre-delinquent behavior, emotional disturbance, abused and neglected children.

"Day treatment" or "day services" programs now exist throughout the State. There are, however, no legislative provisions for social services funding, licensure, operating standards, etc. Funding, as it exists, is a haphazard melange of mental hygiene, day care, education, Federal grant and charitable funds.

Preventive services, in all of its aspects, will be a dominant concern of the Commission during the year ahead. It is our intention to formulate, in consultation with the broadest cross-section of the child care and family service fields and other supportive disciplines, a

practical and effective outline of a Statewide system.

The questions to be resolved - both in the philosophical and organizational spheres - are numerous and weighty. We do not propose, in this present statement of our strong conviction that preventive services must be developed and brought to the doorstep of all who need them, to enter into a discussion of these issues.

For the present, the Commission recommends that Section 398.6(n) of the Social Services Law be amended to free the provision of intensive family casework services from its dependence upon the existence of Federal funding. It should be a mandated service subject to State financial sharing. Consistent with the philosophy expressed earlier in this section of the report, the Commission also recommends that Section 398.6(n) should also be amended to permit provision of services to the entire affected family unit where the local social services official has found that such services may be necessary to avert the risk of serious impairment or disruption of the family unit.

SOCIAL SERVICES LAW, SECTION 358-a

One of the most sweeping recent revisions in child welfare practices occurred when Section 358-a was added to the Social Services Law as Chapter 996 of the Laws of 1973. The legislation had its genesis in a staff paper of the Assembly Ways and Means Committee dated December 27, 1972, entitled, "Controlling the Costs of Foster Care". One of its recommendations was to require that social services officials seek a judicial determination before placing a child, who is receiving or eligible to receive Aid to Families with Dependent Children (AFDC), in foster care. A major purpose of the legislation was to maximize Federal aid (in the AFDC-foster care category) pursuant to Section 408-a of the Federal Social Security Act which provides for partial Federal reimbursement of the total cost of foster care of an AFDC-related child, when removal of the child from his home occurs as a result of a judicial determination that to remain at home would be contrary to the child's best interests. Many persons, including some members of this Commission, have speculated that concern for maximizing Federal participation in foster care costs was the major, if not the only, motivating force behind the law. Others assert that the statute serves the equal, if not greater, purpose of ensuring that children are not being placed in foster care needlessly or contrary to their best interests. Indeed, the Ways and Means Committee Report in question specified concern that institutional placements (as opposed to family foster home placements) were made too often and ought to be actively discouraged. It stated there was a need to intensify efforts to rehabilitate the child's home environment in order to prevent entry into foster care, as well as to try to locate responsible relatives who might care for the child. It noted a reluctance on the part of some local social services officials to submit

their professional judgments to the rigorous scrutiny of the courts. Accordingly, we feel that the dual function of the statute ought to be recognized. It is a means of maximizing Federal aid and also of maintaining the integrity of family life and discouraging both unnecessary entry into foster care and inappropriate referrals within the foster care field. A statistical exposition of the fiscal aspects of 358-a with respect both to net increases in revenue and elimination of unnecessary placements will be presented with the Commission's final report.

The Commission notes that several of its members have expressed the strong conviction that, if Federal aid is made available on a less restrictive basis in the future, the review function now assigned to the court will be conducted by social services agencies themselves, with adequate professional safeguards to ensure the proper referral of children.

Has Section 358-a accomplished its ends? If not, why not? How can it be improved? The Commission has sought to resolve this question since the testimony received at our public hearings and through submission of written statements is highly conflicting. However, certain findings can be made as follows:

(1) The Statute has been of clear fiscal benefit to the State, which has qualified for substantial increase in Federal AFDC-FC funds. A December 1974 projection prepared by the New York State Department of Social Services indicates that Federal aid for foster care during the fiscal year ending March 31, 1974 is estimated to amount to \$20,491,000 (which, for the most part, does not reflect the results of this statute). For the fiscal year ending March 31, 1975, estimated Federal aid on a claim-submitted, "commitment basis" is \$43,500,000, and for the current fiscal year will amount to a projected total of \$53,900,000.

(2) The statute is not being uniformly implemented and enforced statewide. The Commission has found widespread instances of failure by local social services districts to petition the court in cases where it is required as well as failure to file timely petitions with a resulting loss both of Federal funds and the benefits of judicial scrutiny. Indeed, some Family Court judges have felt that they lack jurisdiction to entertain a petition filed more than 30 days after removal of the child from his home.

(3) On the other hand, proceedings in Family Court under the statute have too frequently tended to be pro forma; parties are rarely all present, and the courts all too often proceed on the basis of the petitioners' papers alone. Court dispositions tend overwhelmingly to approve the petition and the foster care plan, but it is not clear whether this is the result of "rubber-stamping", inadequacies of professional staffing and court time, or the unlikely possibility that the foster care plan is appropriate virtually all of the time. The substantial variation of judicial perceptions of the nature of the judge's role in applying 358-a is notable.

(4) The State Department of Social Services has not met its responsibility to supervise the actions and inactions of local departments of social services in implementing Section 358-a. It has not exercised its authority to withhold State reimbursement pursuant to subdivision 3 and 4 of Section 20 of the Social Services Law or Section 358-b thereof. The Commission is cognizant of the fact that the Department now lacks adequate staff to conduct periodic field audits of public and voluntary agencies in order to ensure full compliance with Section 358-a (and of such other statutorily mandated procedures as Section 392). The Commission believes that sufficient funds must be made available for this purpose.

(5) In some counties where §358-a has been assiduously implemented, the average stay of children voluntarily placed in foster care has substantially declined.

RECOMMENDATIONS

(A) Section 358-a should be amended to apply to all children voluntarily placed in foster care by means of an instrument executed by a parent or guardian, without regard to AFDC eligibility. Although extension of the requirement to non-AFDC situations would not qualify the State for additional Federal funds, it would extend to all children entering foster care the protection of judicial screening - a protection which should not be based upon a fiscal AFDC - non-AFDC distinction since it is not the sole problem of one economic or social class. It should be noted that this extension would not impose any additional burden on those localities like the City of New York, which, at their own discretion, are already submitting foster care placements to the Family Court for approval without regard to AFDC eligibility.

(B) Section 358-a should be amended to make it inapplicable to short-term placement of children in foster care. The decision as to the appropriate length of the exempted period - 30, 60 or 90 days - should be based upon fiscal considerations. The extent of the exempted period should be selected upon determination that the additional Federal aid to be received would not balance State and local costs in terms of social services staff and judicial time.

Concomitant with the exemption of short-term placement from the provisions of Section 358-a, as a means of affording protection to the children so placed, the Commission recommends the establishment of a new procedure, separate and apart from that applicable to surrender instruments,

for the voluntary, temporary transfer of the care and custody of children as public charges by a parent or guardian to an authorized agency. Existing procedures in Section 384 of the Social Services Law, which were intended to govern surrender instruments transferring custody and guardianship of children to authorized agencies, are inappropriate for temporary transfers of care and custody. For example, Section 384 requires acknowledgement before notaries public and recordation in the county clerk's office - procedures which are time-consuming, costly and unnecessary in the case of temporary transfers. The new procedure, which the Commission will recommend, is simplified, gives parents and social services officials greater flexibility in negotiating appropriate terms and conditions, and specifically defines the circumstances upon which a parent may, as a matter of right, obtain return of his or her child. The proposed procedure will prevent social services officials from needlessly prolonging the temporary foster care status of children, while providing for the protection of children who ought not be returned to neglectful, abusive, or abandoning parents.

(C) The Family Court must be provided with sufficient professional staff to advise the court in its dispositions of §358-a petitions. If the court is truly to serve as a full participant in the foster care planning process, it must be equipped with a staff sufficiently skilled and trained in social casework to recognize the deficiencies in such plans and with the experience to require agency personnel to supply the court with adequate information. (This recommendation is equally applicable to §392 proceedings, *infra*.)

(D) Section 358-a should be amended to clarify that the Court has jurisdiction despite the fact that the petition was filed late. Parenthetically, it must be stated that there is no apparent reason why petitions cannot be promptly filed. All information which is required to

be included in the petition is immediately available. Additional information could be forwarded thereafter and prior to the hearing.

(E) It is the responsibility of the State Department of Social Services to supervise the social services districts of the State to see that they abide by the requirements of the Social Services Law, including §358-a. The Department must be more diligent in carrying out this responsibility, and, if necessary, should withhold State reimbursement as an appropriate sanction against those districts which are not properly implementing that section.

(F) When the child has already been placed in the care of a voluntary agency by a social services official, a representative of that agency should participate in the Section 358-a proceeding.

JUDICIAL REVIEW OF FOSTER CARE STATUS

(SOCIAL SERVICES LAW, §392)

Section 392 of the Social Services Law (the Pisani Law) has had a profound impact upon the institution of foster care. This impact reveals itself not only in the operation of the law itself (which has promoted the placement of thousands of foster children in new permanent family situations) but also through the light which it has cast on the institution itself, leading to the search for alternative responses to family crises and greater emphasis on the need for preventive and restorative services to troubled families.

Originally added to the Social Services Law in 1970 (Chapter 742), the framework of Section 392 as it stands today derives from Chapter 97 of the Laws of 1971 with subsequent amendments in 1972 (Chapter 940), 1973 (Chapter 804) and 1974 (Chapter 1057). The first law of its kind in the United States, it provides a mechanism for judicial review of the foster care status of various categories of children who have remained in foster care for a continuous period of twenty-four months. On the basis of a study performed by Dr. Trudy Bradley Festinger of New York University School of Social Work (supported by grants from the Field Foundation and the Kenworthy-Swift Foundation) and testimony received at public hearings throughout the State by the Commission from judges, social workers, other professionals and interested private organizations and individuals, the Commission has concluded that the periodic foster care review procedure of Section 392 has had a significant and salutary effect in assuring that children do not get lost in what has often been characterized as the "limbo" of foster care.

The Commission must note, however, that the above viewpoint is not universally accepted. The New York State Council of Voluntary Child Care

Agencies (COVOCA), as a result of a survey it conducted of its member agencies, has concluded that "A review by the Legislature of Section 392 of the Social Services Law is desperately needed. There is no question that a review process has merit but the New York City experience suggests that "392" as it stands is not the answer." The Council of Voluntary Child Care Agencies has stated that the cost in time and dollars of the §392 procedure seems to outweigh the benefits of the review system. The Council of Voluntary Child Care Agencies recommends a different review procedure which would utilize an informational system (such as Child Welfare Information System, Inc.) to "red-flag" cases where a child remains in placement too long, a review committee to review questionable or disputed agency decisions, and, where disagreement still exists, a fair hearing mechanism subject to court review as a last resort. Commissioner Abe Lavine of the New York State Department of Social Services indicated his preference for an administrative review procedure through that Department. The Commission, on the basis of the weight of its research, studies and public hearing testimony, must disagree with the Council of Voluntary Child Care Agencies and the Department of Social Services. The Commission feels that the history of the problem which Section 392 addresses affords scant assurance of the current capacity of the child care apparatus to conduct meaningful and effective self-scrutiny.

The Commission is aware that the Section 392 procedure has not been without its problems and faults - some statutory and other administrative.. The court process has been marked at some times and in some jurisdictions with calendar congestion, delays and confusion. Courts and agencies (both public and voluntary) have been plagued by staff shortages. However, these problems are not and need not be endemic. The Commission is continuing to monitor the process and will be making recommendations

for improvement. It also hopes to engage in a follow-up study designed to examine agency and court actions in all cases in which the Family Court, at the initial 392 court review, ordered children to continue in foster care but required agencies to submit a follow-up report, and those cases in which the court ordered the child to be discharged home, freed for adoption or placed for adoption.

In the meanwhile, the Commission offers the following recommendations for legislative action:

(1) Section 392 should be amended to require the Family Court, in entering an order of disposition, to include its findings supporting its determination that such order is in accordance with the best interest of the child. Authorized agencies sometimes find it difficult to implement Family Court orders in foster care review proceedings because the Court's reasons, findings and purposes have not been stated. Requiring the Court to include its findings in the order of disposition will assist agencies in complying with the court order and in planning for the future of the child. It will also facilitate appellate review where a judicial appeal is taken from an order of disposition.

(2) Section 392 should be amended to reduce, from 24 to 18 months, the time a child must remain in foster care before the Family Court will initially review his status. It is very important, particularly with respect to younger children, that permanence in a home whether it be that of natural or adoptive parents - be achieved as early as possible. Accordingly, the initial Family Court review should occur as early as feasible after agencies and parents have had time to plan for the child. Reducing the requisite period in foster care, for initial Family Court review purposes, from 24 to 18 months would also reduce confusion as to court review dates since the 18 month period would conform with the

period of initial placement authorized by Article 10 of the Family Court Act with respect to adjudicated abused or neglected children.

(3) The privilege attaching to certain confidential communications (such as between spouses, social worker-client, and physician-patient) as a ground for excluding otherwise admissible evidence in foster care review proceedings should be eliminated. This, too, would conform Section 392 procedures with those contained in Article 10, and would enable the Court to obtain all relevant evidence bearing on the child's best interests.

(4) Section 392 should be amended to require that persons entitled to notice of the court review proceeding also be informed of the dispositional alternatives available to the Court. Parties to the proceeding should be entitled to know what the possible results of the hearing could be.

(5) Section 392 should be amended to require the Family Court to appoint a law guardian to represent a child who is the subject of a foster care review proceeding, if independent legal representation is not available, and to require that the law guardian or other counsel retained to represent the child be permitted to inspect agency records pertaining to the child. Family Court proceedings to periodically review the foster care status of children are intended as a protection for the child. Just as in Article 10 (child protective) and Article 7 (delinquency and PINS) proceedings, the child ought to be represented by a law guardian or counsel otherwise retained to act as his spokesman and represent his interests. The child's best interests do not necessarily coincide with those of his parents, foster parents or of the agency in whose care or custody he has been placed. If we recognize that children have legal rights, it would be incongruous to deny the child who is the subject of these important proceedings one of the most basic of rights - that of legal representation.

In implementing the child's right to counsel, we should also provide to the child's attorney a tool necessary to effective representation - the right to access to agency records relating to the child.

While urging the enactment of these recommendations as partial remedies and palliatives for the intrinsic deficiencies of foster care, the Commission wishes to emphasize its conviction that the early detection and treatment of family crises, whenever the hope of remediation can still be entertained, is always and everywhere preferable.

TERMINATION OF PARENTAL RIGHTS

Termination of parental rights - the severing of a parent-child relationship - may be accomplished by any of three methods in the State of New York - by an order of adoption itself, or by the voluntary act of the parent, or involuntarily by judicial order. The termination of parental rights pursuant to an order of adoption is the method commonly utilized in private-placement adoption situations. In this case parental rights are terminated with the entering of the order of adoption. Generally, this is accomplished without contest as the natural parents have executed a consent to the adoption pursuant to the Domestic Relations Law. Occasionally, parental consent to adoption will be dispensed with by the court upon the grounds set forth in Section 111 of the Domestic Relations Law - abandonment, deprivation of civil rights, insanity, mental retardation, incompetency, cruelty or neglect.

The Commission notes that, while the termination of parental rights is often clearly necessary and, in some cases, preferable from the beginning, it is most often an admission not only of parental failure but of a profound societal failure as well. These failures point clearly to the need for, among other things, the establishment of an effective system of early intervention and outreach which will lead to the preservation or restoration of family ties.

In authorized agency adoptions, it is usual for the natural parents to have voluntarily relinquished their parental rights prior to the adoption proceeding by way of the execution of an instrument known as a "surrender" (Social Services Law, Section 384, subdivisions 1-5). A surrender instrument commits the guardianship and the custody of the child to an authorized agency which then is authorized to consent to the child's adoption in lieu of the parent. The Commission observes that

Chapter 639 of the Laws of 1972 (the so-called "Baby Lenore Law") has had the very beneficial effect of establishing greater certainty and finality in surrender situations. That law provides that, if a surrender instrument so recites, an action may not be brought by the surrendering parent for the custody of the surrendered child or for the revocation or annulment of the surrender where the child has been placed in an adoptive home and more than 30 days have elapsed since the execution of the surrender. That law also established that in any such action, the surrendering parent shall have no right to custody superior to that of the adoptive parents, and that the child's custody must be awarded solely on the basis of his best interests with no presumption that such interest will be promoted by any particular disposition. Notwithstanding the outcry which accompanied the introduction and eventual enactment of this law, the Commission, in its research and public hearings, has not observed or been made aware of any problems resulting from its implementation. It has been effective and fair in achieving its objectives.

Parental rights may be terminated prior to an adoption proceeding involuntarily by way of a permanent neglect proceeding (Article 6 of the Family Court Act, Section 611 et seq.) or by way of a proceeding pursuant to Section 384 (subdivisions 6 and 7) of the Social Services Law. Section 384 authorizes the Family Court or Surrogates' Court to commit the guardianship and custody of a child to an authorized agency where the child's parents are dead and no guardian has been appointed or where the parent has abandoned the child for a period of six months. The Family Court may also so act where the parent, by reason of mental illness, is presently, and for the foreseeable future, unable to provide proper care for a child who has been in the care of an authorized agency for at least one year immediately preceding the court proceeding. This latter

provision was added by Chapter 863 of the Laws of 1973; the Commission observes that it serves a salutary purpose in freeing children for adoption where they formerly would have remained in foster care throughout their minority because their mentally ill parents could not have been deemed to have abandoned them due to their mental condition. The Commission also observes that the abandonment ground for involuntary termination of parental rights continues to be troublesome. The courts in applying the statute have refused to make a finding of abandonment where the parents maintain even a very tenuous contact with their children through infrequent post cards, birthday greetings or other insubstantial gestures. Indeed, the Court of Appeals in the recent case of Susan W. et al. v. Talbot G., 34 N.Y. 2d 76, held that a mere "flicker of interest" on the part of a parent was sufficient to preclude a finding of abandonment - (see recommendation #3, infra). (The reader may well infer, from the persistence of such "flickers", the real loss to society which might have been averted by the timely intervention of preventive services at an earlier date.)

Abandonment, as ground for terminating parental rights, has proven troublesome to courts and authorized agencies for many years. An occasional lower court was willing to hold that a parent who seldom visited his or her child in foster care was guilty of abandonment where no substantial love or parental concern or interest was demonstrated. Most courts, however, applied the rigid requirement that "a settled intention to forego forever parental rights" must be proven. Thus thousands of children were doomed to remain in foster care until 1959 when the predecessors of the Family Court Act - the Domestic Relations Court Act and the Children's Court Act - were amended by Chapters 449 and 450, respectively, enacting a permanent neglect statute. Now

Article 6 of the Family Court Act, the permanent neglect statute provides for the termination of the rights of a parent who has failed for a period of more than one year following the placement of his or her child in foster care "substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship".

The Commission has found that the statutory basis for termination of parental rights (particularly involuntary termination) is in need of further review and recodification - in structure and substance. The philosophy underlying permanent neglect is misunderstood or ignored; courts pay lip service to the doctrine of the "best interests of children", while in their actions upholding or reinforcing antiquated doctrines of parental rights under which children are regarded as little more than chattels. Due process of law for parents and best interests of children are not and need not be inconsistent tenets. There even appear to be regional or court-to-court differences in the use of termination methods.

In any event, the present statutes are not working. Children admitted to foster care because of abandonment and neglect (the most common conditions leading to foster care) remain in care longer than other children - a median of 4.38 years, according to a 1973 Report of the Department of Social Services. If agencies are registering children, who have been legally freed for adoption and who have been in foster care for more than six months, with the State Adoption Exchange (and the Department has assured the Commission that this is the case), then only a little more than 2,000 children have been legally freed - and most of these were through voluntary surrenders. Of the 33, 145 dependent and neglected children in foster care in 1973, approximately 85% had been in

care for more than one year.

As indicated above, recodification of the termination of parental rights provisions is needed. However, the problem goes deeper than these statutes. Administrative problems also exist which tend to impede the process of freeing children for adoption. Sound legislation may be hampered by non-uniform implementation; funding mechanisms act as a disincentive for social services districts and voluntary agencies to institute termination proceedings. As a basis for further study in order to identify obstacles, disincentives, reasons for administrative confusion and misunderstanding of purpose and concept, the Commission has applied for and received a grant from the State Department of Social Services out of Title IV-B (Federal Social Security Act) funds. The project will run for eight months ending on October 15, 1975. In the meanwhile, recognizing that recodification takes time, and that improvements can be made in existing law now, the Commission makes the following legislative recommendations:

(1) Article 6 of the Family Court Act should be amended to provide a criterion (the best interests of the child) upon which a Family Court Judge must base an order of disposition in permanent neglect proceedings, and to prohibit a presumption that the best interests of a child in such a proceeding will be promoted by any particular disposition. No standard presently exists upon which a Family Court Judge must render an order of disposition in a permanent neglect proceeding. This recommendation would provide an appropriate standard in keeping with the purposes of such a proceeding. It would also preclude the Court from presuming that a particular disposition would be in the best interests of a child, thereby requiring that dispositional determinations be based upon material and relevant evidence bearing on the child's best interests. The

recommendation, in this regard, adopts an approach taken in other Family Court proceedings (cf. Social Services Law, §383.5 and Domestic Relations Law, §115-b.3 (d) (v)).

(2) Technical amendments are needed in the definition of "permanently neglected child" contained in Section 611 of the Family Court Act. Recently some Family Court Judges have interpreted the definition of "permanently neglected child" to include only those children who have come into the care of an agency through "placement" in a strict, technical sense. The proceeding was not intended to be so limited in its application, but, rather was to be applicable to all children in the care of authorized agencies, without regard to the technical, legal procedure which caused them to come into care. The definition should be clarified accordingly and conforming changes should be made in the provisions (§614) relating to the required allegations in the petition originating the permanent neglect proceeding.

(3) It should be clarified that evidence of insubstantial and infrequent contacts by a parent with his or her child shall not be sufficient, as a matter of law, to preclude a finding that the parent has abandoned such child or a determination that such child is a permanently neglected child. Section 384 of the Social Services Law provides for the termination of parental rights of parents who have abandoned their children. In applying the statute, however, courts have refused to make a finding of abandonment where parents have maintained very tenuous contact with their children through infrequent post cards, birthday greetings or other insubstantial gestures. In one such recent decision (Susan W. et al. v. Talbot G., 34 N.Y. 2d 76) the Court of Appeals stated, "Even where the flame of parental interest is reduced to a flicker the courts may not properly intervene to dissolve the parentage". A mere "flicker of interest"

should not be permitted to serve as a basis for depriving a child of a permanent home. Where parental interest no longer has substance, parental rights ought to be terminable in the best interest of the children. Similar and conforming amendments should also be made in the Domestic Relations Law provision obviating the need for adoption consent by a parent who has abandoned his or her child and in the permanent neglect provisions of the Family Court Act.

(4) Section 384.7(f) of the Social Services Law should be amended to eliminate the necessity of taking the testimony of a psychiatrist on the staff of a psychiatric clinic, if the Court maintains such a clinic, in Family Court proceedings to commit the guardianship and custody of a child to an authorized agency on the ground of the parent's mental illness. The requirement that the Court take the testimony of a psychiatrist on the staff of a psychiatric clinic maintained by the Court is unnecessary since the law already requires the testimony of a psychiatrist appointed by the Court, pursuant to Section 35 of the Judiciary Law. Furthermore, the requirement is unworkable because in many instances the person to be examined is hospitalized and cannot be brought to the psychiatric clinic and the psychiatrists attached to the clinic are unable, as a practical matter, to travel to the hospital to see the patient.

(5) "Mental retardation" of a parent should be included as a possible ground distinct from the existing category of "mental illness" upon which the guardianship and custody of a destitute or dependent child may be committed to an authorized agency by the Family Court. Chapter 863 of the Laws of 1973 deleted a legal declaration of insanity or mental defectiveness and inserted, in lieu thereof, mental illness as a ground for termination of parental rights in Section 384 of the Social Services

Law. The definition of mental illness does not include mental retardation. Many parents of superior intelligence are mentally ill. Many mentally retarded parents are not afflicted with any recognized mental illness. This problem should be resolved by specifically adding mental retardation as a possible separate and distinct ground for the commitment of destitute or dependent children to authorized agencies. In recommending that the mental retardation of one or both parents be recognized as a possible ground for termination of parental rights, the Commission wishes to make clear that such a policy must not be enforced indiscriminately and that there should be no blanket presumption that any degree of retardation, however mild, outweighs the claims of a devoted and conscientious natural parent who, with proper counseling, is able to maintain a constructive and mutually rewarding parent-child relationship.

ADOPTION SUBSIDY

In 1968 (Chapter 320) New York became one of the first states in the country to enact a subsidized adoption law (paragraph k of subdivision 6 of Section 398 of the Social Services Law). Originally limited to adoptive parents who had cared for the adoptive child prior to adoption as boarding home parents, the law authorized social services officials to make payments to the adoptive parents for the maintenance of the child as a means of encouraging adoption by persons who would otherwise be unable or unwilling to adopt a child for financial reasons. The amount of the subsidy was based on the financial need of the adoptive parents. In 1971 (Chapter 259) the law was extended to include all adoptive parents regardless of their former status as boarding home parents. As a result of subsequent amendments (L.1971, Chapter 160; L.1973, Chapter 510; L.1974, Chapters 1018 and 1020) subsidies are now available on a contractual basis for a fixed period of time up to the age of 21 for children with physical or emotional handicaps significant enough to be obstacles to adoption. They are also available, without contract and without regard to the financial circumstances of the adoptive parents, for expenses, including medical, surgical, psychiatric and other special costs, services and devices. The subsidy is also now available for children adopted in New York but who have been removed from the State by the adoptive parents, and to children adopted by residents of another state or Puerto Rico if the children are, or are likely to become, public charges in this State. The Commission recommends that this restriction involving present and potential public dependency status be deleted.

The Commission has found the adoption subsidy law to be of substantial value in making possible the adoption of numerous children who might not otherwise have found permanent adoptive homes. It has enabled persons

to adopt who would otherwise have been prevented from doing so for financial reasons. It has encouraged the adoption of children whose medical, physical or emotional problems would otherwise have intimidated adoptive parents. And it has saved substantial expenditures of foster care funds which would otherwise have been required. New York State Department of Social Services statistics indicate the following subsidized adoptions completed for the years 1969-1974: 1969-24, 1970-181, 1971-325, 1972-464, 1973-490, 1974 (through October 31)-584, a total of 2068 children.

The trend is heartening, but the performance could be improved. The Commission is informed that some counties in the State have not used the adoption subsidy law at all and others very minimally. The statute appears to be sufficiently discretionary to permit social services officials to avoid subsidy payments through a "judgement" that it is not necessary for the welfare of the child or that a child's handicap is not an obstacle to adoption. No administrative mechanism, such as a fair hearing procedure, appears to exist within the Department for the review of what might be an abuse of discretion by a social services official in denying an adoption subsidy application. Nor does a proceeding, pursuant to Article 78 of the Civil Practice Law and Rules, appear to be a practicable remedy. The Commission's study of this question is continuing.

Another problem which has arisen regarding adoption subsidy is the State policy that medical subsidies be paid at Medicaid rates (fee scales approved by the Director of the Budget) - a policy implemented by the issuance of Medicaid cards. It is unclear to what extent, if any, this policy and concomitant problems such as restricting of the recipient's choice to Medicaid providers of services, has acted as a disincentive in the adoption subsidy program. The Commission is pursuing this question.

STATEWIDE ADOPTION EXCHANGE

Social Services Law, Section 372-b

In 1971 (Chapter 47), Section 372-b was added to the Social Services Law, thereby creating a statewide adoption exchange in the State Department of Social Services to "serve all authorized agencies in the State as a means of identifying possible adoptive homes on a statewide basis for children who are not placed in their own communities, and also to broaden the opportunities for prospective adoptive parents to have children placed with them".

The Adoption Exchange law requires every authorized agency to refer to the Adoption Exchange each child in its care who has been legally freed for adoption but has remained in foster care for a period of six months or more. Each authorized agency is also required to refer to the Adoption Exchange each approved adoption applicant who has not had a child placed with him for adoption within six months of approval.

State Department of Social Services statistics indicate that, as of October, 1974, there were 2,087 children registered with the Exchange and 1,265 approved adoptive families registered. However, the Commission is informed that the Adoption Exchange has been successful in effecting direct placement of only 1% of the children registered - a record which must be characterized as an operational failure.

The Adoption Exchange experience is particularly perplexing when contrasted with a parallel operation conducted on a more limited statewide scale, by the Council of Adoptive Parents of Rochester, New York, Inc. The Council, through a mechanism known as the "CAP Book", began operations in June, 1972. The CAP Book is a listing of children available for adoption (similar to real estate multiple listing publications) including pictures and description of the children. There are

now 152 copies of this book in circulation throughout New York and in 19 other states, the District of Columbia and Canada. Fifty-five agencies, adoptive parent groups and other interested persons and public officials subscribe to the service. The CAP Book is run by paid staff and volunteer adoptive parents (in the home of an adoptive parent) on a minimal Department of Social Services grant of less than \$30,000 per year. Yet, the "track record" of CAP is markedly superior to that of the Adoption Exchange. Of the 373 children registered and listed in the CAP Book, 97 have been placed directly as a result thereof (26% as contrasted with the Exchange record of 1%). An additional 66 children (18%) have been placed through other means as contrasted with an additional 4% in the Exchange category.

Why is there a substantial difference in the success ratio of the two operations? In fairness to the Adoption Exchange, it must be observed that "its deck is stacked". Only 266 (13%) of its children are five years old or less, while 1,071 (84.6%) of the families registered have expressed a preference for children four years of age or less. 1,135 (54%) of the children are black, while only 56 families expressed willingness to consider a black child. In addition, Department of Social Services statistics indicate that 1,007 children (47.7%) are physically and/or mentally handicapped. Yet, it has been pointed out to the Commission that the children listed in the CAP Book exhibit the same mental, physical, racial and age characteristics as those listed on the Adoption Exchange, although a greater degree of selectivity may have been exercised in the choice of the children listed in the CAP Book. In fact, the CAP Book has found adoptive homes for mongoloids, teenagers, children of all racial backgrounds and children with severe physical handicaps such as hydrocephalus, cerebral palsy, blindness and deafness. 71% of the children placed were

of school age and 27% were ten years of age and over.

The Commission also notes that, within the New York City Department of Social Services, Special Services for Children has taken the initiative of maintaining an active adoption exchange of its own.

(1) The Commission has found that children are being registered with the State Adoption Exchange bearing labels as "ready for placement", "temporarily not placeable" or "permanently not placeable". The Commission is concerned that such categorization when non-standardized and uncontrolled may create a self-fulfilling prophecy greatly impeding the children's chances of placement. "Not placeable" children, for example, are not included as often as the others in the periodic computerized "matching" process of the Exchange. The Commission would urge the Department to review this problem and perhaps either abolish the practice or control and standardize it.

(2) The Commission believes that greater efforts on the part of the State Department of Social Services, local departments of social services and voluntary agencies are needed in the recruitment of adoptive families for "hard to place" children. While many agencies have expended enormous energy and staff time in this endeavor, others have not. Contributing to the problem of recruitment of such adoptive homes is the refusal of many agencies to accept further applications and to perform home studies thereafter based upon the fact that those agencies have no children available for adoption or that the agency already has a waiting list of approved adoptive homes. If the adoption exchange process is to be successful, each agency will have to regard itself as a part of the statewide adoptive system. Thus, although one agency may not have a child for every applicant, somewhere else in the state there may be an agency which has a child available but no adoption applicant. The

Commission recognizes that many, if not most, agencies have severe staff shortage problems and therefore have difficulty in performing additional home studies. Addressing itself to this problem, the Commission will continue its efforts to explore new and more effective funding mechanisms and incentives for obtaining adequate staff. This is most certainly an area where each dollar invested will reap great foster care dollar savings - not to mention the incalculable value of reclaimed lives.

(3) The New York State Adoption Exchange program is a computerized operation which does not work. The problem may be the unsuitability of the computer approach. That conclusion gains credence when the CAP Book operation - a more direct, human approach - is contrasted. The CAP Book is updated semi-monthly; the Exchange much less frequently. The CAP Book features high-quality photographs and warm, personal descriptions; the Exchange utilizes a computer print-out. CAP Book staff actively travel around the State explaining and promoting their system; the Exchange is not actively promoted or explained.

(4) The Adoption Exchange lacks acceptance among its client agencies. Little or no contact with the agencies was maintained during the two years (1971-1973) between the original manual system and the development of the computerized operation. Agencies have been discouraged by out-of-date computer print-outs.

(5) The Commission believes that the Adoption Exchange concept is valid and workable. It will continue to monitor the Exchange and make further recommendations, administrative and statutory, if necessary. However, continued operation at the present low level of success is intolerable, and should this continue, new methods of operation should and will be explored.

PENDING LAWSUITS

The Commission is charged with the duty of monitoring and evaluating the effects of recent judicial decisions which affect established State policies governing the custody and care of minors. This function has been diligently pursued by the Commission's staff, and findings and recommendations evolving from such judicial decisions are contained in several portions of this preliminary report dealing with particular subject areas.

Additionally, there are two still-pending lawsuits whose implications are so far-reaching and significant as to be worthy of special mention herein: 1) George and Larry "Child", et al. v. Beame, et al. (This is a class action suit brought in U.S. District Court, Southern District of New York, on January 23, 1975); and 2) Shirley Wilder et al. v. Jule Sugarman, et al. (Suit commenced in U.S. District Court (Southern District of New York) on June 14, 1973). Since both of these matters are sub judice, the Commission refrains, as a matter of policy, from any comment. It is, however, awaiting with interest and concern the outcome of these cases.

FURTHER RECOMMENDATIONS AND CONSIDERATIONS

In addition to the foregoing topics, the Commission has reviewed other existing practices, statutes and conditions affecting the care, custody and rights of minors, and presents the following recommendations:

(1) Section 1055 of the Family Court Act, relating to the placement of adjudicated abused or neglected children, should be amended to extend to such children who are placed in foster care various protections and procedures already applicable (in Section 392 of the Social Services Law) to other categories of children in foster care who are the subject of periodic Family Court review.

Under existing provisions of law, the Family Court, after adjudicating a child as abused or neglected, may place him in foster care for a period of 18 months and extend that placement for successive one year periods until his 18th birthday. Unlike the regular Family Court review afforded to other categories of children in foster care, pursuant to Section 392, the review procedure for court placements of abused and neglected children has tended to become pro-forma and lacks specific hearing notice requirements which would afford those interested in the welfare of the child an opportunity to appear and present evidence to the Court. Unlike the Section 392 procedure, the placement procedures applicable to abused and neglected children also lack provision authorizing the Court to direct authorized agencies to undertake efforts to encourage and strengthen the parental relationship - efforts which often are necessary and beneficial if the child is to be protected after his discharge from foster care and return to his parents. Nor is there now provision (as there is in the Section 392 procedure) for the Court to order an authorized agency to institute a proceeding legally to free the child for adoption - a step which should be taken where grounds therefor exist, so that the

child whose parents have abandoned him or who is permanently neglected will not languish in foster care throughout his childhood.

(2) A new section should be added to Article 10 of the Family Court Act which, through the concept of "adjournment in contemplation of dismissal", would provide an expeditious means for affording protection to abused or neglected children and for placing such children and their parents under the supervision of the Family Court and a child protective agency - without having to resort to a time-consuming and stigmatizing adjudicatory hearing.

By utilizing the concept of "adjournment in contemplation of dismissal" (presently applicable in Family Court in delinquency proceedings and in courts of criminal jurisdiction, for example, in marijuana prosecutions), the Family Court would be able to extend supervision to families and protection to abused and neglected children. It would encourage abusive and neglectful parents to cooperate with the court and child protective agencies in their protective and supervisory efforts. This approach would also reduce unnecessary removals of children from their homes. Where the respondent parents fail to cooperate with the supervising child protective agency, the court would be authorized to proceed directly to a dispositional hearing. The court would also possess authority to issue preliminary orders of protection and orders of temporary removal of the child from the home where necessary.

(3) The Commission recommends that the State Constitution be amended to raise the Family Court to the status of a distinct Family Part of the Supreme Court of the State of New York. In furtherance of this recommendation the following Resolution has been adopted by the Commission:

WHEREAS, cases heard before the Family Court of the State of New York vitally affect the integrity of family life and the lives and futures of the children of the State of New York; and

WHEREAS, the Family Court has been accorded new roles and greater responsibilities regarding children in foster care; and

WHEREAS, the depth of society's interest in the well-being of families and children equals or exceeds its interest in all other matters litigated at the present time in courts of original jurisdiction; and

WHEREAS, the Supreme Court of the State of New York is the highest court in the State with such jurisdiction; and

WHEREAS, the exclusion of those matters customarily dealt with by Family Court from the purview of the Supreme Court implies that matters vital to families and children enjoy a lower level of importance than other judicial subjects; and

WHEREAS, the Supreme Court of the State of New York possesses the greater number of justices and can command the greatest depth of auxiliary resources of any court in the State, the availability of which to Family Court would greatly strengthen the resources available to Family Court problems; now, therefore, be it

RESOLVED, that the Temporary State Commission on Child Welfare respectfully urges the Senate and Assembly of the State of New York to adopt a concurrent resolution proposing an amendment to the Constitution of the State of New York elevating the Family Court to the status of a distinct Family Part of the Supreme Court of the State of New York; and be it further

RESOLVED, that copies of this resolution be transmitted to the Temporary President of the Senate, the Speaker of the Assembly and the Chairman of the Senate and Assembly Judiciary Committees.

(4) The Commission has observed, through testimony submitted at several public hearings, that there is a great need for training programs for foster parents. Such programs ought to be provided at State, or shared State and local, expense on a pre-service or in-service basis. Foster parent training programs should be offered, or perhaps even mandated, in order to guide foster parents in methods and approaches necessary and appropriate in dealing with the many emotional and other problems confronting

the child who is separated from his parents. The training programs should also be utilized to apprise foster parents of the rights and obligations of the foster child, the rights and obligations of foster parents, the role of the agency and the sources and types of services available in the community to them and to the child.

(5) On January 9, 1975, the Attorney General issued an opinion (in response to a letter from the State Board of Social Welfare) relating to the activities of a New York lawyer who had assisted in arrangements for the private placement of a child for adoption. The Commission is concerned that the Attorney General's opinion has been phrased in such general terms as to cast a cloud over the legality of all pending and future private placement adoptions where the adoptive parent is not the child's parent, step-parent, grandparent, brother, sister, uncle, aunt or legal guardian, and where the mother (usually) has utilized the services of an intermediary. The issues involved in this topic are highly controversial, and possible solutions are complex in their ramifications. The Commission hopes to develop legislation which will pragmatically reflect the realities of private-placement adoptions and, at the same time, afford protection to the children involved. It should be noted that some members of the Commission are of the opinion that all adoptions should be required to be conducted through authorized adoption agencies.

(6) In almost all of the public hearings convened by the Commission, testimony was received from concerned, interested foster parents - individually, and as representatives of foster parent organizations. They have pleaded repeatedly for increased involvement in planning for the children in their homes. The Commission has been impressed with the obvious concern which foster parents manifest for their charges - a concern which might well be utilized by the agencies they serve. Many agencies presently

so involve foster parents because they recognize that it is unreasonable to expect foster parents to bestow warmth, affection and guidance upon children without according them the opportunity to be heard on matters so intimately affecting the children. The Commission will request the State Board of Social Welfare to review in depth existing State and local administrative policies regarding the rights and roles of foster parents and report the results of that review to the Commission together with its recommendations.

(7) The Commission is seriously considering the statutory creation of a new form of permanent foster care which would be limited in its use to those situations where it would be inappropriate or impossible to achieve the preferable goals of either returning the child to his biological family or placing him with adoptive parents. "Permanent foster care" or "foster guardianship" would be reserved for those cases where a foster child has a strong and enduring relationship with natural parents who, for whatever reason, are and will remain unable to maintain a home for the child and with foster parents who have served as successful parent-substitutes. Such foster parents, if they are willing to assume a parental role without adoption, would be allowed to do so with a greater degree of permanence, responsibility and rights. The status would be judicially created and supervised, and care of the child would continue, to some degree, to be at public expense (with a measure of accountability by the foster guardian to the social services district which is financially responsible). The new relationship would continue until the child attained majority unless terminated earlier by the Court. The natural parents would retain certain rights such as reasonable visitation and the right to consent (or to withhold consent) to adoption.

The Commission is exploring various possible ramifications of this

new proposed status, such as right to consent to marriage or medical treatment, money management, out-of-state or country vacations, changes of foster guardian residence, name change for the child, education, representation of the child in legal proceedings, and insurance, veterans, Social Security and other benefits, etc. The concept is believed to offer a sound basis for providing some children with greater security and emotional stability. It would also assist selected foster parents to become surrogate parents rather than mere custodial agents of social services agencies. Parenting is not a professional function to be performed by social workers; it is a personal function requiring a stable, more permanent relationship. If long-term foster care situations are to avoid the artificiality of relationship which now characterizes so many of them, they must be transformed into a more natural, secure and protected personal relationship. It should also be noted that another possible benefit of the creation of this new status would be to free social services staff from their close supervisory and field functions relating to long-term foster care children - which should ease some of the staff shortage problem pervading the system.

PERSONS IN NEED OF SUPERVISION (PINS)

A. HISTORICAL BACKGROUND

In 1646, Massachusetts prescribed the death penalty for a son who disobeyed parental commands, and, well into the 19th Century, New York made it a crime for a child to lead "a vicious and vagrant life". A more benevolent attitude surfaced at the turn of the century with the advent of juvenile courts which assumed jurisdiction of all youths, whether neglected, abused, delinquent, or disobedient.

In 1962, New York revised its juvenile laws and created a non-criminal category to include persons less than 16 years old who were truants, or "incorrigible, ungovernable, or habitually disobedient and beyond the lawful control of parent or other lawful authority". The Legislature reasoned that such children - given the acronym PINS - might benefit from court involvement, but should be spared the stigma of a delinquency adjudication while receiving the additional services made available to these troubled children. The laudable goal was simply to help the child.

Every jurisdiction has some mechanism whereby courts can intervene with respect to juvenile conduct which would not be a crime if committed by an adult, although there are only 35 states with status offender categories similar to New York's.

Nationwide, 25 per cent of all juvenile court adjudications are for non-criminal youthful misbehavior, and almost one-half of all incarcerated minors are PINS, or their sister state equivalents. In New York City, 40 per cent of all cases handled by the Family Court arise as PINS petitions. The proceedings are informal, the motivating force benevolent, and yet we are confronted with a great increase in juvenile crime and recidivism. Today, over 24% of all police arrests in the country are of

juveniles. The myriad reports and studies of the situation are not encouraging; they provide strong evidence of the fact that we are failing to meet the needs of the children of New York.

Testimony at Commission hearings to date has produced widespread calls for reform. Particular areas and modes of reform enjoy no such unanimity, and that is, of course, the difficult task we face.

B. PINS PROFILES

At the outset, it is helpful to examine some statistics in order to better understand both the PINS himself and the present situation in the areas of adjudication and disposition.

According to the Judicial Conference, there are approximately 13,500 PINS cases each year statewide. Forty per cent of these cases are adjusted at intake and never petitioned. Over one-half of all PINS petitions allege "ungovernability". Fifty-nine per cent are brought by parents or parental surrogates, 25 per cent by school officials and the remaining 16 per cent by unrelated individuals, police, or various institutions.

A private study (Yale University Law Journal), in examining PINS cases in New York City and Rockland County, found that 32 per cent of the alleged PINS had previous court contact, at the minimum with the court's Intake Unit. Siblings tended to share the same problems, and so it was found that in 53 per cent of the PINS cases there was previous family involvement with the court on juvenile matters. The average family income was \$5,357, with 36 per cent of the PINS families on welfare. Finally, it was found that 33 per cent of the alleged PINS had subsequent contact with the Family Court.

In its study of 300 PINS children placed outside their homes between June 1971 and May 1972, the Judicial Conference attempted to

create a profile of these children. One-third of all these children had been in some type of placement prior to the survey petition, many before their sixth birthday. Seventy per cent were between 13 and 16 years of age. The vast majority came from single parent families or broken homes, with one-half the families on welfare. In the sample, 52 per cent of the parents were labelled "inadequate", a figure which might well give credence to the treatment of these children as neglected. The majority of the sample had serious school-related problems, with truancy among the allegations in 71 per cent of the cases. Once court action was initiated, which action the complainant can statutorily insist upon, 20 per cent of the families refused to take the child home, and eight per cent of the children refused to go home.

Sixteen per cent of the children in the sample had a history of psychiatric hospitalization, and another 12 per cent were found to have serious physical problems. Both voluntary agencies and Division For Youth Title II programs have established minimum IQ scores for admittance, and the median IQ score of the sample was a low 85.

It is difficult to quantify the problems of these children, and this sample study might not accurately portray the PINS child statewide, but the Judicial Conference's conclusions warrant mention. The PINS child was found to be largely a product of societal neglect, and so, in a real sense, a neglected child. Yet it was found that they are often difficult to distinguish from delinquent children.

Many children in the survey, finally adjudicated PINS, had delinquency petitions pending against them.

This one study can, at the very least, serve as a reminder of the complexities with which we are confronted when we attempt to deal effectively with these children.

C. THE PINS FAILURES

The juvenile justice system's treatment of the PINS child has allegedly failed in various respects.

I. The Label Itself -- Many would argue that these children may more accurately be labelled "neglected" or "abused" than "incorrigible" or "ungovernable", and the treatment received, which these proponents regard as punitive in nature, misplaces the blame for such children's conduct. At the other extreme, Milton Luger, Director of the Division For Youth, is among those who perceive little distinction between PINS and adjudicated delinquents, and so identical dispositions are supportable in his opinion.

II. Tool of Parents and Educators -- Some critics observe that PINS petitions have been used as a judicial tool, at the disposal of angry parents or frustrated school administrators to discipline children - a problem which better lends itself to non-coercive intervention by social agencies.

III. Services -- The litany of alleged failures also includes the obvious lack of special services for the PINS child -- one of the primary rationales for our creation of this classification. This dearth of specialized services was legislatively recognized in 1965 with the authorization of the use of training schools for PINS children since neither public nor private agencies had answered the need. Such "temporary" authorization was made permanent three years later.

IV. Legal Vulnerability -- The PINS statute has been attacked as so unconstitutionally vague and overbroad, as to serve as an invitation for arbitrary and capricious enforcement, without the benefit of reasonable notice of the proscribed conduct. The most recent constitutional challenge has been filed by the American Civil Liberties Union and is

currently pending in Supreme Court, New York County.

V. Stigma -- Additionally, it has been argued that a PINS adjudication results in a stigma which directly contradicts the Legislature's good intentions. This stigma is seen as twofold: the child's perception of himself as a wrongdoer, and society's disapproval of what it regards as reprehensible behavior.

VI. Court Resources -- It has been pointed out that PINS adjudications drain resources of the Family Court, to the detriment of juvenile delinquents upon whom the court might better focus its attention.

Time and again we have heard of the need for effective voluntary community projects, but it has been theorized that such programs won't develop to any meaningful degree as long as the option of a PINS finding exists as a catch-all for troubled adolescents.

VII. Facilities -- The reported inadequacy of facilities which house PINS youngsters has been brought to the attention of the Commission. Children with the most serious problems are often placed in ill-equipped training schools because they are unable to meet the rigid standards of voluntary agencies. PINS are more likely to be incarcerated than juvenile delinquents and their lengths of stay are generally longer. There is at present no secure facility providing mental health treatment, a need which has been voiced from all quarters. One study found 45 per cent of all those admitted to detention were charged with PINS offenses, even though the intent of the Family Court Act is to discourage the detention of PINS. Only seven counties presently have secure detention facilities for juveniles, and non-secure facilities have not been developed in a third of the counties.

D. ISSUES

I. Elimination of PINS Category -- The most sweeping proposal for revision in the area of juvenile justice has come from the increasing number of those who would eliminate the PINS category. Again we are reminded of our two-fold purpose in creating the PINS classification, and it is alleged the system has failed both in avoiding the stigma of a delinquency adjudication and in providing the requisite treatment.

Those who favor the dissolution of PINS jurisdiction claim that the court's ability to respond adequately to the needs of these children and their families has been over-estimated. Some go on to argue that even if adequate resources were made available, basic rights are violated when a child's liberty is restrained for non-criminal conduct. One finding indicated that PINS receive essentially the same or more severe dispositions than delinquents. Division For Youth statistics reveal that 43 per cent of those admitted to their facilities are PINS and their average length of stay is longer. Involuntary deprivation of liberty is viewed as a form of punishment though the goal is rehabilitative. A recent study by the Ohio Youth Commission found that the more severe the disposition the greater the probability of committing a subsequent offense.

The adversarial nature of the juvenile court proceedings is perceived as a process which only serves to exacerbate family conflict and tensions.

If placement outside the home is required, these proponents argue that a neglect petition could achieve such a result without exposing a child to the stigma and tension of a PINS adjudication.

In the absence of the PINS jurisdiction, it is claimed that these families would seek help on a voluntary basis if such assistance was relevant and readily available. It is claimed that the growth of such

programs is currently inhibited by the existence of the PINS classification.

Finally, they argue that these children would not be ignored by the Family Court, but would come before the court on abuse or neglect petitions, or on delinquency petitions. Removal of the PINS category then would result in more appropriate dispositions. The Yale University study found that in 37 per cent of the cases involving allegedly ungovernable youths, the children were in fact neglected.

Elimination of the PINS jurisdiction has widespread support. The Council of Judges of the National Council on Crime and Delinquency and the Children's Bureau of the U.S. Department of Health, Education, and Welfare have supported such a proposal. So, too, have the 1970 White House Conference on Children, New York's Council of Voluntary Child Care Agencies, the American Civil Liberties Union, the Juvenile Justice Standards Project of the American Bar Association, the Citizens Committee for Children of New York, Inc., the Association of the Bar of the City of New York and the National Council of Jewish Women.

In the course of its hearings the Commission has heard others strenuously argue against the abolition of PINS jurisdiction. While cognizant of the defects in our current system, they believe that removal of the PINS category would prevent some of these children from ever receiving help. The court's authority is deemed necessary because many of these families would not seek or accept assistance on a voluntary basis. They stress the need to identify and help children who are potentially dangerous or likely to engage in criminal behavior. Their opponents point to the lack of empirical data to prove any connection between PINS conduct and future criminality.

Lengths of stay in away-from-home facilities are viewed as

irrelevant because such terms are based on the time needed for rehabilitation and so are not intended to bear any relation to the seriousness of the offense committed.

If it were not for the existence of the PINS category, they believe even fewer children would receive services than do now. While they recognize that some institutionalized PINS do not receive treatment, their remedy would be to increase services, not eliminate PINS.

It is questionable whether voluntary mechanisms can replace the PINS process since some evidence shows that those families who need services most are least likely to request them. It is further alleged that many of these children would be ignored by the courts. They cite the legal difficulties in adjudicating neglect and abuse cases as a roadblock to reaching some children. Those demonstrating "pre-delinquent" behavior would not be reached until a delinquent act was committed.

A related reform has been urged by Mr. Luger, of the Division For Youth, who would create a "Children Before the Court" category to include both juvenile delinquents and PINS children. Such a classification would, he believes, give the court the utmost flexibility in fitting the disposition to the needs of the child, not to his label. His basic premise is, of course, that there is no real distinction between these categories of youths - they have merely "acted-out" in different manners.

II. Age Extension (See Recommendation #1, infra) -- It has been proposed that the PINS jurisdiction be extended to include 16 and 17 year-olds. Proponents of this extension argue that 18 is the age of majority and until such time parents are legally responsible for the acts of their children, yet the law denies them the use of a PINS petition. A child can be categorized as neglected until age 18 (F.C.A. §1012(f)), and once adjudicated a PINS and placed, such placement can be extended until age 18, and,

voluntarily until age 20 (F.C.A., §§754, 756).

Certain facilities have expressed their current ability to treat children up to age 18, and others have expressed their willingness to do so if provided with additional resources.

The Nassau County Probation Department has urged this reform in order to help girls age 16 to 18, who are currently denied treatment as PINS. The Youth Aid Division of the New York City Police Department regards the status quo as having created a "vacuum", leaving them with no legislative machinery to aid these children and their families. Their Runaway Unit frequently receives calls from the parents of 16 and 17 year-olds but is powerless to assist.

One recent survey found that those alleged to be ungovernable are overwhelmingly in mid-adolescence, with 68 per cent over age 14. The very problems which lead to a PINS petition have been said to be problems inherent in a parent-child relationship when the child reaches his mid-teens.

Those opposed to any extension of PINS jurisdiction generally cite the already meager and inadequate facilities and resources. In their opinion, raising the PINS age to 18 would only serve to overload an already overburdened circuit. Current programs are said to be insufficient in meeting the needs of younger children, and traditionally the older child is more difficult to place and effectively treat.

In 1962 the age of consent was 18 for girls, and so PINS jurisdiction was extended to girls until age 18. Such distinction based on sex was struck down as unconstitutional (In Re Patricia A., 31 N.Y. 2d 83) in 1972. Today, many females PINS petitions allege sexual promiscuity, but those opposed to raising the age point out that the age of consent is now 17.

III. Truancy -- If the PINS classification is to be maintained, it

has been urged that truancy be removed as ground for a PINS petition. "Truancy" is statutorily defined as the failure to attend school "in accord with the provisions of part one of Article Sixty-Five of the Education Law".

The ACLU has argued that the statute's truancy clause allows the public school system to shirk its responsibility to provide even troubled children with a meaningful education. The Council of Voluntary Child Care Agencies is in accord, and the Association of the Bar of the City of New York would eliminate the truancy category and mandate that the Board of Education set up specialized programs to deal with truants, a class of children who often suffer from learning disabilities.

Some have viewed the current situation as sadly ironic. A child can be adjudicated a PINS solely on the basis of truancy, only to be placed in a facility without an educational program or in one seriously inadequate to meet the child's educational needs.

In hearings before the Subcommittee on the Family Court, however, at least two judges argued strongly against the removal of truancy as grounds for a PINS petition. They saw such conduct as a form of anti-social behavior not to be ignored by the courts and that, in the course of a truancy hearing, very often other serious problems are recognized. One judge noted that exclusion of truancy would effectively destroy the State's compulsory school attendance law.

The Nassau County Probation Department agrees and further argues that truancy is a proven precursor to future criminality.

IV. Placement -- Many who would leave the statute intact urge that the dispositional alternatives currently available upon a PINS adjudication be strictly curtailed to exclude "placement".

The bifurcated procedure provides for a fact-finding hearing, and upon adjudication, for a dispositional hearing. Currently, a judge has four dispositional alternatives:

- a) As a juvenile status offender, only a PINS qualifies for "discharge with a warning";
- b) both PINS and juvenile delinquents are entitled to a "suspended judgment", and can be released on their own, or their parents' recognizance, with minimal judicial supervision and no specific form of treatment;
- c) "probation" is a more structured alternative, and upon such disposition, the child is returned home for an initial period of one year, under the supervision of a probation officer; and
- d) it is the fourth alternative, "institutional placement", which some would have eliminated. The PINS child can be placed in one of four types of training schools (designated for PINS in response to the Ellery C. decision); an urban home, work camp, or other Division For Youth Title II facility; with a voluntary private agency; or in a temporary shelter.

Those totally opposed to the institutionalization of PINS recommended various approaches. They remind us that the PINS category was created in order to treat this non-criminal youth in a different manner than an adjudicated delinquent, yet currently institutional placement and treatment are identical.

The ABA Juvenile Justice Standards Project has recommended that training schools and detention facilities not be used for PINS youths.

The ABA recommends that the court be required to employ probation or community resources, but not institutional facilities. This approach which initially would divert many children from the inadequate institutional system, is embodied in the recently passed Federal Juvenile Justice and Delinquency Prevention Act of 1974. Congress has required

that all states receiving block grants under the Act assure that, within two years, no status offenders be detained or committed to institutions. LEAA has a similar condition precedent to receipt of its discretionary funds.

The prohibition against the commingling of PINS and juvenile delinquents in the 1973 Ellery C. decision by the New York Court of Appeals has been viewed as a variation of this approach. Such reform would curtail plea bargaining which has been said to be one result of the Ellery C. decision, as discussed later.

The American Civil Liberties Union has argued that the quid pro quo for the State's removing a non-criminal youth from his home is the promise of treatment for that child. Alleging the total lack of this requisite treatment in correctional facilities, they, too, would favor a prohibition against such placement. Five states - Alaska, Maryland, Massachusetts, New Jersey, and Wisconsin - currently prohibit the institutionalization of status offenders.

In the hope of achieving the same result, it has been suggested that there be a presumption of the non-beneficial result of incarceration in operation, with the burden of proving the need for such a disposition on the party seeking to have the PINS youth incarcerated.

Mr. Luger, of the Division For Youth, however, points out that many PINS children are more hostile than delinquents, and so are in need of placement in secure facilities. He views the PINS label as little more than that, and so would regard the above recommendation as seriously hindering the court from making the disposition best suited to the child.

E. SOME SPECIFIC AREAS

As a result of testimony presented at its hearings, the Commission will seek to explore in greater depth some of the problems raised by many

PINS procedures - including plea bargaining, intake and law guardians.

I. Plea Bargaining -- Currently, a PINS petition can be substituted for a delinquency petition on the accused's motion or on the court's own motion. This form of "plea bargaining" warrants close scrutiny. How widespread is the practice, and does it help or injure the child?

Estimates on how frequently such plea bargaining takes place are widely divergent. The New York City Legal Aid Society claims this practice is "minimal". A study by the New York State Judicial Conference found that 10% of adjudicated PINS were originally law violators whose delinquency petitions were "reduced" to PINS, and many others had pending delinquency petitions for which the PINS petitions were not substituted.

Others claim the practice is much more widespread than the 10% figure, but they are without the data to substantiate such claims.

Delinquency petitions are reduced for a number of reasons. Lack of evidence may preclude a delinquency finding and the court wishes to maintain jurisdiction of the child. It might be the child's first offense and the court reduces the petition in order to treat the child with leniency. Some forms of disposition are available to a PINS child and not to a juvenile delinquent, so the court might reduce the petition in order to effectuate placement. The Office of Children's Services, however, claims the opposite result has come about in response to the Ellery C. decision. They believe judges were reluctant to place PINS in training schools in view of this higher court decision, and this had served as a disincentive to plea bargaining. This may no longer be the case, as a result of subsequent Court of Appeals cases authorizing placement of PINS in training schools.

Those who perceive little distinction between PINS and juvenile delinquents see little harm in the practice of plea bargaining.

Such a practice can, however, be viewed as antithetical to the philosophy underlying the PINS jurisdiction. PINS were said to be entitled to different, unstigmatizing treatment because they had committed no crime. Yet, now we find that many PINS youths are accused (if unadjudicated) juvenile delinquents. If this practice is widespread, it must raise serious questions about continuing this justification for PINS jurisdiction. This practice apparently has a harmful effect both on the PINS child's perception of himself and the downgraded delinquent's perception of the law and our courts.

II. Intake — The Family Court Act allows for "rules of court" to authorize probation departments to carry out the intake and adjustment procedure (F.C.A., §734). Pursuant thereto, the probation departments have established separate units to carry out this function. Any adjustments are, of course, voluntary since anyone who wishes to file a petition cannot be denied access to the courts. Some have questioned whether an insistent complainant should be able to initiate formal action over the objection of the intake officer, and some jurisdictions have eliminated this assurance of access.

The intake procedure is intended to sift out cases not requiring judicial action in the judgement of the intake officer. Some 40 per cent of all statewide PINS cases (5,400 yearly) are adjusted at intake and so are never petitioned.

Efforts at adjustment may only extend for an initial two-month period, and can be extended an additional 30 days only with the judge's permission. Information gained at intake may not be used at the adjudication. (F.C.A., §735).

The intake process has been described as one of "dramatic discretionary decision-making". After the initial contact, the dispositional

decisions made thereafter occur in a great variety of ways. These pre-petition dispositions reflect the organizational structure and correctional philosophy of the probation department involved, in addition to the ideology and training of the individual officer making the decision.

The intake alternatives are identical for the alleged PINS child and the alleged delinquent. During the statutorily permissible two month period, the intake unit makes every effort to put the child and his family in touch with a voluntary agency. Many probation officials feel a PINS case is more difficult to handle at this stage than one of delinquency because of the "family pathology" involved. It is believed that no satisfactory adjustment can be effected without the family's cooperation, but very often parents are not motivated enough to seek the assistance of a voluntary agency when directed to do so by the intake officer.

If the offense alleged is truancy, the intake officer will contact the child's school and advocate, for example, a change of program for the child.

The intake area has been viewed as the realm in which many problems, essentially social in nature, can be solved, but again the lack of resources is lamented. Most private agencies establish their own parameters of service, and prefer to deal with more highly motivated middle-class parents.

The Nassau County Probation Department, unlike other intake units, has its own counseling unit staffed by professionals to which these families are referred. In practice such a convenient agency cuts down on those who would otherwise be lost between the intake officer's door and the door of a distant private agency. Setting up such intake counseling units in other counties might well be a means of reaching these troubled families in a meaningful manner at the earliest possible stages.

Pursuant to a nine-month study in 1970, the Nassau County Intake Unit has been granted funds to establish a pilot diversion project, "Operation Juvenile Intercept". Their study found a high percentage of siblings who shared the same behavior problems, and they concluded that it was imperative to counsel the family as a unit, possibly during intake, but an opportunity lost once the child is petitioned and labelled the wrongdoer.

C. LAW GUARDIANS

Representation by counsel is statutorily mandated by the Family Court Act (§741). The respondent is notified of his right to counsel when notice of a hearing is given, and this right is extended through the dispositional stage.

Law guardians are designated by the respective appellate divisions from either the county Legal Aid Society, the practice in New York City, or from a court-appointed panel of law guardians. Legal counsel is intended to insure that the client is not denied due process, and to assist the court in reaching the disposition best suited to the child.

Such basic due process rights as the right to counsel, the right against self-incrimination, and right to confront witnesses were extended to juveniles by the 1967 Gault decision (387 U.S.1) and to date the only adult right not so extended is the right to a trial by jury. So, at present, the Constitution has been interpreted as requiring an advocate for the juvenile, but not necessarily an advocacy system.

What then is the role of the law guardian? It is currently within the prerogative of the individual guardian to determine the part he wishes to assume.

At one extreme the guardian's role is perceived as an adversary one, indistinguishable from the criminal attorney. This is the stance

adopted by the Legal Aid Society, whose office policy is to insist on all rights and privileges of the client at every stage. It is their "fixed determination" to avoid any placement of their client. The basic premise is that the juvenile court proceeding is criminal in nature.

Alternatively, some firmly believe that the parens patriae function of the juvenile court requires the law guardian to be a cooperating participant in an essentially conciliatory activity. They represent their client with the single purpose of joining with the court and its officers to determine the adjudication and disposition which will best serve the child.

It is difficult to determine which law guardian best serves the interests of the child. If the court is not complying with the Legislature's intent, and, for example, detaining a PINS when there are not statutory grounds for such detention, then clearly a staunch advocate should be present to protect his rights. However, if all reports indicate the need for institutionalization, is the child best served by a guardian who attempts to forestall any attempt at placement? Is it the guardian's role to determine unilaterally what disposition is the most beneficial and to act accordingly?

Many stress the need to keep in mind that the juvenile court system inherently demands a different role for the lawyer. The fact-finding process is intended to be a cooperative venture, and the immaturity of the lawyer's client demands a much different relationship. The child is not in a position to take a very active role in the handling of his case, and yet the lawyer should not be permitted to ignore his individual needs and desires.

New York currently allows an alleged juvenile offender the right to waive his right to counsel. It is, of course, constitutionally mandated

that any such waiver be "informed". The Supreme Court has recognized the importance of representation by counsel, and yet we currently allow a 14 year-old the right to make an "informed" waiver of this right. This question is particularly important in the PINS area where the child is very often answering allegations of his parents. At least one state has provided for a non-waivable right to counsel. (See Recommendation #2, *infra*.)

RECOMMENDATIONS

The foregoing discussion presents an overview of PINS jurisdiction in New York State. It describes the issues which the Commission has identified as a preliminary step in its research and which will provide a strong basis for further study and eventual development of specific proposals for legislative and administrative action. In the meanwhile, the Commission offers the following preliminary legislative recommendations:

(1) Pending development of more comprehensive proposals relating to PINS jurisdiction, the Commission recommends legislation to increase the maximum age, from under 16 to under 18 years, at which a child (male or female) may be subject to the jurisdiction of the Family Court as a PINS. The Commission further recommends that such increase remain in effect for a period of two years. Unless or until a more appropriate mechanism is developed to provide an authoritative resource to assist parents in dealing with their 16 and 17 year-old children, the existing PINS procedure should be made available; it is the only existing mechanism which could be made readily available.

The extension of the maximum age at which a child may be subject to the jurisdiction of the Family Court as a PINS is recommended by the Commission on a temporary basis pending the results of its continuing investigation into the broader issue of whether PINS jurisdiction should

be retained at all or in its present form and, if not, what effective alternatives thereto might be adopted. The Commission intends to make specific recommendations regarding this issue upon completion of its investigation.

(2) The Commission recommends that waiver of counsel by a PINS (or juvenile delinquent, too) be prohibited in proceedings, pursuant to Section 756 of the Family Court Act, to extend or continue a placement. Even under the best of circumstances, a court should be very reluctant before it will permit a minor to waive his right to counsel. In a proceeding to extend the placement of a juvenile delinquent or person in need of supervision, the circumstances virtually compel the conclusion that such waiver could not be made knowingly and intelligently. The child in placement has been isolated from his parents and relatives. In addition he has been under the control and influence of the agency or institution which is seeking the placement extension. Under these conditions, the child's representation by counsel should be required.

JUVENILE DELINQUENTS

A. A Historical Perspective on Juvenile Delinquency

Until 1899 the criminal laws of the various states drew little distinction between children and adults, and children were sent to courts and jails with adults. In that year the first juvenile court in the United States was established in Illinois. Reformers felt that children should receive special treatment and that special courts should be established to act "in the best interest of the child" - a concept which surprisingly had lain dormant for centuries from the standpoint of its application to juvenile offenders, although its roots stretched far into the antecedent history of English common law, where the doctrine of parens patriae invested the King and later the Chancellor with the role of "father of all children". The juvenile court movement substituted the judge in the chain of kindly and wise men who would act as substitute parents and serve the interests of the child before the court.

Unfortunately, parens patriae in some instances became, in the name of benevolence, a license for arbitrariness, and dissatisfaction with the juvenile court system increased.

As Justice Fortas observed: the child received the "worst of both worlds; that he gets neither the protection afforded to adults nor the solicitous care and regenerative treatment postulated for children." Kent vs. U.S., 383 U.S. 541 (1966).

The course of the juvenile court system was substantially altered in 1967 when the United States Supreme Court handed down its landmark ruling in In Re Gault 387 U.S. 1, declaring that, "Under our Constitution the condition of being a boy does not justify a kangaroo court". The high tribunal set forth certain basic constitutional rights that must be accorded children in delinquency proceedings. Among these were: (1) notice

of the charges; (2) right to counsel; (3) right to confrontation and cross-examination of the witnesses; and (4) privilege against self-incrimination.

Shortly thereafter, the Supreme Court, relying on the Gault rationale, held unconstitutional a provision of the New York Family Court Act which permitted adjudication of delinquency on the basis of "a preponderance of the evidence". The court decreed that a finding of delinquency must be based on proof beyond a reasonable doubt as in adult criminal actions. (In Re Winship, 397 U.S. 358). As a result of these judicial decisions, many persons felt that juvenile hearings were bearing an uncomfortable resemblance to criminal trials, but then the Supreme Court in McKeiver v. Pennsylvania (403 U.S. 528) reversed the trend in holding that juveniles need not be accorded jury trials in delinquency hearings as a matter of Federal constitutional due process.

Since McKeiver the status of juvenile court is uncertain since no clear-cut philosophy can be perceived to guide us for the future. Questions remain as to how closely the juvenile justice system should parallel the criminal justice system and how much of the parens patriae concept we should retain.

While the juvenile justice system remains in this state of confusion, the demands on its resources are ever-increasing. According to the latest estimates from the Federal government, juveniles account for half of all arrests for serious crimes. The New York figure is comparable. Juvenile homicide in New York State has risen over 400% in less than five years. In 1969-70, 22 homicides were committed by persons under the age of sixteen. By 1973-74, this number had risen to 96. The current recidivism rate indicates that the juvenile justice system is presently unable to cope. Reform is urgently needed.

What follows is a brief analysis of the system, a description of its component parts, and a critique of some of the specific problems that

have been brought to the attention of the Commission.

B. Police Procedures

In some jurisdictions the juvenile after arrest is turned over to a Police Department Youth Division. Syracuse and New York are among the municipalities with such programs. The responsibilities and procedures of Youth Divisions vary. In Syracuse, for example, a juvenile taken into custody is automatically turned over to a Youth Division officer who brings the juvenile to Family Court. New York City's Youth Aid Division manages a pre-judicial diversion program. Under this system, a "YD" card is filed on juveniles picked up for minor misdemeanors and they are then referred to a social agency for placement or guidance. If the alleged crime is a felony, unlawful assembly or any misdemeanor considered by the police department as a "photographable misdemeanor", the juvenile must be charged with delinquency and is not eligible for the police diversion program. The police define "photographable misdemeanor" as: possession of weapons; manufacturing of weapons or dangerous instruments; jostling; fraudulent accosting; escape; endangering the welfare of a child; and sexual abuse.

The diversion program is voluntary and non-coercive. If any of the parties involved in a juvenile delinquency case does not wish to have the juvenile diverted by the police department, the Youth Division will send the juvenile to Family Court.

Access to "YD" records has been restricted in the last few years by a Federal District Court case (Cuevas v Leary, 70 Civ 2017 SDNY). A stipulation was agreed to, which provides that all "YD" cards must be destroyed when the youth reaches 17 or when the charges are withdrawn, unfounded or unsubstantiated. The cards are not accessible to the Family Court for any of its proceedings.

Police diversion programs also exist in other areas of the state. The Monroe County Youth Services System, for instance, operates such a program for the county sheriff's office and the Rochester Police Department through a grant from the Division of Criminal Justice Services. The Commission intends to conduct further study toward the development of guidelines and standards for diversion programs which would ensure consistency and fairness.

C. Probation Department

The Probation Department has three sections: Intake, Investigation, and Supervision. Probation, historically, has had functions associated with post-adjudicative services. In recent years, however, the Department has become involved in a pre-adjudicatory procedure to identify cases which it feels do not require judicial action.

For arrested juveniles, the Intake Service reviews each case to determine its appropriateness for adjustment-at-intake, diversion programming, or the filing of a delinquency petition in Family Court. Before a juvenile is adjusted-at-intake, all parties involved in the case are supposed to accept this procedure; any offense can be taken to court if the complainant insists. Adjustments are for a 60-day period unless a judge extends the period an additional 60 days. It has been estimated that Probation adjusts slightly more than half the delinquency cases at intake.

At present there are no standardized guidelines for Intake. The Juvenile Justice Standards Project of the American Bar Association has recommended that uniform guidelines be established with minimum education requirements for local intake and probation personnel. The Presidential Task Force Report of 1967 also recommended formulation of written guidelines and standards. Improved guidelines obviously are necessary to insure that adjustment-at-intake is not arbitrary, ineffective or superficial.

According to the Department of Probation, guidelines for Intake are in the process of being standardized, but a question has arisen as to whether the Probation Department or the Office of Court Administration has the authority to enforce them.

D. Family Court

If the juvenile's case is not adjusted at intake, he is the subject of a petition which brings him before a Family Court Judge, at which point a fact-finding hearing is scheduled. If he is "found guilty" as alleged, the juvenile is held in custody or temporarily released pending psychiatric and probation reports. Finally, within strict time limits, he faces a dispositional hearing upon which the judge may either suspend judgment, place or commit the respondent to an "appropriate" facility or individual or place him on probation.

To protect juveniles from unnecessary detention after "arrest", strict criteria and limitations as to periods of detention have been legislated. A hearing to determine preliminarily whether the Court has probable jurisdiction must commence within three days or the next day the court is in session, whichever is sooner, if the juvenile is in detention. Similarly, a fact-finding hearing to determine whether the respondent did the act or acts alleged in the petition must commence not more than three days after the filing of the petition, if he is in detention. The judge can adjourn the hearing for no more than three days. Exceptions are provided for cases involving homicide or assault or by motion of a parent or person legally responsible for the juvenile for good cause. In these instances the judge may adjourn the hearing for "a reasonable length of time."

After a fact-finding hearing, there is a second hearing to decide among the dispositional alternatives. The judge can adjourn the hearing for no more than two ten day periods for investigation of the child's

"surroundings; conditions and capacities". If the juvenile is not being detained the adjournment cannot exceed two months. The Commission is informed that the twenty day period is not sufficient for the preparation of an adequate psychological report which, Probation has stated, could take up to six weeks.

The dispositional hearing, as stated in the Family Court Act, is used "to determine whether the respondent requires supervision, treatment or confinement". The Court may place a juvenile in a suitable facility managed by the Division for Youth, the Commissioner of Social Services or any voluntary agency which can adequately care for the delinquent. Placement is for an initial period of eighteen months subject to extensions of up to one year each by further court order. The Court may also commit the juvenile, for a period not to exceed three years, to an appropriate local facility, social services official or other authorized agency. It is unclear whether this commitment authority is being utilized by the court to any appreciable extent, since the Division For Youth may not receive committed delinquent children under this provision and appropriate local public facilities are virtually non-existent. A few voluntary agencies, however, do receive some delinquents on a commitment basis. In the case of a juvenile who is fifteen years of age and has committed a class A or B felony, the Court can commit the youth to the Elmira Reception Center (if a male) or to a State or local facility, including Westfield State Farm, or to a private institution (if a female). Proposals to extend such maximum terms of placement are discussed in later sections of this report.

The Presidential Task Force Report (1967) states, "The great hopes originally held for the juvenile court have not been fulfilled. It has not succeeded significantly in rehabilitating delinquent youth, in reducing or even stemming the tide of juvenile criminality, or in bringing justice

and compassion to the juvenile offender." Among the many factors alleged to contribute to this failure are:

1. Inadequate education and training for juvenile court personnel.
2. Lack of feedback regarding success of dispositions.
3. Possible organizational difficulties in the court system.
4. Conflicts between the rights of the accused and society's right to freedom from fear.

F. Division For Youth

State-operated facilities for the adjudicated juvenile delinquent are managed by the Division For Youth which receives approximately 55% of the total number of delinquents.

It has been alleged that the services in the training schools are inadequate for the proper care and rehabilitation of the juvenile. The Committee on Mental Health Services Inside and Outside the Family Court in the City of New York in its 1972 report, "Juvenile Justice Confounded: Pretensions and Realities of Treatment Services", stated, "Not one school is equipped to provide even minimal mental health treatment for the seriously disturbed children it receives. This is not because of budget cuts." The report went on to state that the part-time psychiatrists on the staff of the training schools are full-time personnel at nearby State Hospitals or schools for the retarded. This limits the available psychiatric services for the delinquent at the Division For Youth facilities.

The actual length of stay at the training schools is determined, not by the Family Court Judge, but by the Division. For delinquents the average stay is between six to nine months. The Commission is inclined to question whether the Division should have such unfettered discretion to determine when to send a juvenile back to the community.

Recently, there has been movement in the direction of establishing

community-based programs to better serve the child's needs. Massachusetts has shifted its entire child care program to community-based facilities and services (in 1972). California is in the process of switching from State-operated institutions to State-administered community-operated facilities. To encourage the community programs, California provides a financial incentive to those counties which exhibit a reduction in juvenile commitments to State institutions. Proponents of community-based programs in New York argue that only the violent delinquent should be placed in a secure facility. All other juveniles would be kept in community surroundings for care and treatment.

F. Voluntary Child Care Agencies

There are 33 voluntary child care agencies throughout the State which provide care to juvenile delinquents. These agencies receive approximately 90% of their funding from State and local governments.

Some of these agencies have frequently been criticized for allegedly refusing to serve dangerous and aggressive children. The percentage of adjudicated delinquents and PINS placed in voluntary agencies has, however, increased somewhat in the last few years. 16.6% of all delinquents who were placed by the Family Court went to voluntary agencies in the year ending 6/30/72, but by June, 1974, the percentage had risen to 24.2%. Just what responsibility the voluntary sector should have, vis-a-vis the public sector, in caring for these juveniles is an issue which the Commission will continue to consider.

DISPOSITION OF ADJUDICATED PINS AND JUVENILE DELINQUENTS

PLACEMENT OR COMMITMENT 1970/1972 NEW YORK STATE

	7/1/70 - 6/30/71				7/1/73 - 6/30/74			
	P I N S		J. D.		P I N S		J. D.	
	#	%	#	%	#	%	#	%
Placement in Voluntary Agency or Institution	579	36.3	158	16.6	610	43.1	306	24.2
Department of Social Services	392	24.6	121	12.7	430	30.3	201	16.1
Division for Youth	530	33.3	644	67.5	309	21.8	692	55.0
Own Name or Foster Home	91	5.7	25	2.6	68	4.8	51	4.0
Department of Correction	2	.1	6	.6	0	0	10	.8
TOTAL	1594	100.0	954	100.0	1417	100.0	1260	100.0

Source: Based on statistics provided by the Administrative Board of Judicial Conference of the State of New York.

G. Department of Mental Hygiene Facilities for Court-Related Youth

Some of the juveniles who appear before the Family Court under juvenile delinquency petitions are seriously disturbed and in need of intensive psychiatric care. In testimony before a legislative hearing, Elizabeth Schack, Director of the Children's Services Unit of the Office of Court Administration, discussed the difficulties Family Court judges face as they seek to order appropriate dispositions for these youngsters.

Some children who are a threat to themselves and to the community do not seem to fit the profiles of the confinement facilities available to the courts. The Division For Youth's facilities lack sufficient psychiatric services; voluntary agencies cannot accept them because of lack of facilities and staff to properly help or supervise such children; and they cannot be placed in a State mental hospital unless they meet current restrictive admission criteria and require full-time in-patient care in a mental hospital. This determination is now made by Department of Mental Hygiene psychiatrists. Many of these youngsters, it is said, need psychiatric help during their "acting out" periods only. According to a director of a children's psychiatric facility, "While youngsters may, at times, require psychiatric help, it does not mean that they all need commitment to a mental hospital, any more than a broken leg would necessarily require long-term commitment to a general hospital."

While accurate figures are difficult to acquire, one study by the Office of Children's Services reported that one in ten juveniles appearing before the New York City Family Court had a history of psychiatric hospitalizations.

The Commission believes that the Department of Mental Hygiene should extend its responsibilities to include the provision of psychiatric

services to children in the custody of the Division For Youth - either in Division or Department facilities as may be most appropriate in a particular case.

Since 1971 there have been on-going efforts to develop a cooperative program between the State Department of Mental Hygiene and the State Division For Youth for the care of these children. These efforts were initiated by former Family Court Judge Justine Wise Polier and have been continued by the Office of Court Administration. It appears that such a program could be operated at the Bronx State Hospital if the Division For Youth receives a grant from the Division of Criminal Justice Services. This Commission has been watching that four-year effort with impatience and some hope.

Judge Polier notes that often municipal hospital psychiatrists refer children to the Department of Mental Hygiene, which returns them stating that they are not really mentally ill. She suggests the following:

1. Any such child found to be psychotic and in need of long-term hospitalization by the psychiatric division of a municipal hospital should be promptly accepted and treated until the State hospital has performed its own study and found that another type of care would be more appropriate.
2. State hospitals should accept children from nearby training schools when psychiatric episodes occur and provide short term care as required.

In response to criticism within the juvenile justice community, and in response to Governor Carey's directive that the Department assume broader service responsibility for violent, court-related youth, some program efforts are reportedly under way within the Department.

The Department informs us that two small, secure in-patient units

are being established in the Bronx and in Queens.

They have requested the fiscal resources to establish Manhattan, Brooklyn, Queens and Buffalo Units of approximately 20 beds each to deal with the violent, disturbed, court-related youth in each of these areas. The Department further proposes the establishment of three mobile treatment teams to provide clinical services to the residential facilities operated by the Division For Youth.

The Commission recognizes the urgent need for secure facilities that provide medical and psychiatric care, where juveniles can be removed from the community and treated. It was, therefore, relieved to learn of these developments within the Department and will continue to watch with interest.

A final criticism of Department of Mental Hygiene services is that Department facilities notoriously do not report AWOL situations. Instead those children who "leave without permission" are listed as "discharged". Legislation to remedy this problem is under consideration by the Commission.

H. Sentencing

The provisions of the Family Court Act for placement do not relate to the type of crime committed. The court's powers are, except in the case of certain serious crimes perpetrated by 15-year-olds, exactly the same regardless of the gravity or mildness of the offense. The term of confinement is entirely within the discretion of the agency which accepts the child.

The Division For Youth has testified that the average juvenile convicted of homicide is kept in its facilities for 11.8 months (although a recent policy change requires a minimum of twelve months) and that the over-all average stay for youngsters involved in felonies is six to nine months.

Family Court Judge Nanette Dembitz, in a recent New York Law Journal article, questioned the wisdom of the Division For Youth "rapid release policy for hard-core delinquents" because "in every theory of remediation, education or conditioning, time is a factor in learning and redirection... A serious and prolonged effort offers more hope than the quick return of an inveterate, violence-prone delinquent to the streets and to his delinquent way of life with insufficient education and training for a change in prospect".

Ironically, PINS children (those whose offenses consist of such behavior as truancy and disobedience) are usually kept in Division For Youth facilities far longer than are juvenile delinquents. Much of the current frustration with, and criticism of, the juvenile justice system is traceable to this release policy.

The need for greater accountability by the various child care agencies (public and private) regarding their release of youngsters entrusted to their care is acute. The Commission concludes that some mechanism for greater accountability and control of agency release procedures is necessary. Several such mechanisms have been suggested, and judicial review is one which has wide support. We, therefore, are considering the various proposals mentioned below.

Since the ability of the Juvenile Justice System under present law to cope with youngsters under the age of sixteen who have been involved in acts of violence is so widely and justly questioned, people are asking what can be done.

One response is to remove certain youngsters from Family Court jurisdiction and transfer them to the jurisdiction of the criminal courts and the adult penal system - an approach which is referred to in this report as "waiver". Waiver is utilized, in varying forms, in at least 40

states. Waiver provisions vary with respect to age and offense, but the majority of the states preclude waiver below the age of 16.

Grounds for waiver customarily have been vague, where enunciated at all. The Supreme Court substantially altered that situation in 1966 in Kent v U.S. (383 U.S. 541), holding that waiver requires a hearing at which the juvenile is represented by counsel, has access to social investigation reports, and receives a statement by the juvenile judge of the reasons for his decision to waive.

These have been substantial improvements in the fairness and rationality of the waiver procedure. The basic concept of waiving youths under 16 years to criminal courts, however, is the subject of considerable controversy and merits thoughtful consideration.

The objectives of waiver can properly be divided into four categories: deterrence; rehabilitation; satisfying the public's sense of justice; and prevention of further criminal activity through secure confinement. Serious consideration must be given as to whether, in fact, waiver is the best means of satisfying these objectives.

With respect to deterrence, it can certainly be argued that the effectiveness of deterrence is far more closely related to the certainty and swiftness of confinement and to its length than it is related to the label under which confinement is made.

One consequence of the possible ranges of permissible sentences and modes of confinement under existing law is the lack of awareness, on the part of most juvenile delinquents and youthful offenders, of any difference in the penalties visited upon them by the courts. Conversations between Senator Donald Halperin and inmates both at training schools and Cocksackie underlined this ignorance and indifference. If there is to be any hope of effective deterrence of future criminal activity, these

distinctions must be made meaningful and memorable.

In illustration of the present blurring of these distinctions, it is to be noted that juveniles under sixteen often lie about their age and seek to be dealt with by the criminal court because they believe that they will "get off" more easily due to plea bargaining. It would seem, therefore, that for most, if not all, juveniles, the prospect of waiver to the criminal court may not, unless the problem of sentences is solved, serve as an important deterrent.

Careful consideration should be given to the question of whether the objective of rehabilitation will be served by committing these youths to the adult correctional system. This is particularly vital because the age of these persons makes it inevitable that they will ultimately be released to the community while still relatively young. One must ask the question, what are the available resources within the adult correctional system to deal with this new type of inmate? Interviews with correctional officials and personnel indicate grave doubt as to the adequacy of present facilities to give any kind of treatment appropriate to this age group or indeed even the ability to segregate them from older offenders. Thus, unless there is a substantial infusion of new resources into the adult correctional system, grave danger exists that the young offender waived to the criminal justice system will be incarcerated with older, even more hardened offenders and thereby exposed to more sophisticated tutoring in crime and the violent radicalism endemic among some elements of our present prison population.

The public sense of outrage and its legitimate need to feel that its norms are being fairly and certainly enforced cannot be ignored in weighing the validity of waiver. However, with the uncertainties and admitted shortcomings of the criminal justice system, another possible

alternative for satisfying this legitimate objective is extension of confinement and control of the offender within the juvenile justice system. The possibility of meeting this objective through modification of current sentencing provisions within the juvenile justice system itself will be discussed below.

With respect to the objective of providing secure confinement of the young offender and thereby protecting society from a repetition of his acts for at least a given period, the adult correction system has superior facilities to anything now provided for juvenile delinquents.

With increased crowding of adult correctional facilities, the feasibility of providing such security for the indefinite future is problematic. It therefore seems that new secure facilities will be necessary for these offenders irrespective of the jurisdictional choice of systems.

In considering the advantages and disadvantages of waiver legislation, one must also take into account that its enactment and use will require extensive and at times protracted hearings in the Family Court to determine whether, under constitutional standards, a given offender should be transferred to the criminal justice system. The impact upon an already overburdened Family Court system of this new jurisdiction must also be taken into account in making such an evaluation.

The Commission observes that the question of transferring jurisdiction over violent and serious juvenile crimes has been raised in response to a pressing public need for greater personal security.

To characterize the proponents of waiver as humanly insensitive or its opponents as overly permissive is both unfair and unproductive.

The Commission believes that considerations of rehabilitation are and will always be important and, especially in the cases of those who

are quite young, must be the objective of society.

Yet we must not permit sentimentality to blind us to the fact that the removal of the habitually or uncontrollably violent individual from society confers a substantial benefit (although a costly one) on all peaceful citizens, young and old.

The Commission urges continuing effort and study toward reconciling these two legitimate objectives.

One means of preventing premature release of youngsters involved in serious offenses, is to require that no such youngster, perhaps over a certain age, be granted early release without review by and approval of, the court.

There is widespread agreement that hospitals, Division For Youth facilities, and voluntary agencies should not be able to reduce the length of placement or commitment of a child solely on their own initiative or by passive acceptance of AWOL situations

State training schools and other juvenile correctional facilities and the Family Court should be held accountable for the supervision of juveniles who have committed serious crimes. Under present law and policies large numbers of juveniles are returned to the community after short periods of incarceration and are committing serious crimes.

Several groups concerned with the juvenile justice system's inadequacy in this area have jointly endorsed and submitted to this Commission a recommendation that the following legislation be enacted:

- a. Delinquents found to have committed acts which would constitute Class A or Class B felonies for adults, and placed with the Division For Youth for an initial term of eighteen months, shall not be discharged prior to the expiration of that period without a court hearing.
- b. That the court order granting or denying such early

discharge be in writing and specify the reasons for the decision.

- c. That the court order authorizing such discharge shall specify conditions, including plans for aftercare services where appropriate.
- d. That the juvenile shall be represented by counsel at such hearing.

A proposed variation on this theme is now being considered by the Commission. It is suggested that release from the facility before completion of the sentence, or at termination of the sentence, will be at the discretion of the Division For Youth. However, in preparation for release, a report must be prepared by the director of the facility for submission to the court, ten days before release, giving background; child's needs for aftercare and supervision; family's willingness and/or ability to accept the child; what services the family needs to maintain the child in the family (home help, tutor, parenting, etc.), which services in the community to which the child is to return are available; and what arrangements have been made for the delivery of these services. If the court disagrees, it can order a review of the decision. Such a review would include legal representation for the child. The Office of Probation would have an on-going responsibility regarding this group of children.

Malcolm Goddard, Counsel to the Division For Youth, however, cautions that "as a matter of practicality, for the Division to transport both the child and the psychiatric and professional staff necessary to justify his release, back to the county that he came from for a judicial hearing would be a great burden." He urges that we consider, too, the pressure

which might be generated on the already overburdened Family Court. Finally, he points out that the Division has developed, within the last three months, a "sensitive case procedure" which mandates that Judges be notified prior to release and given an opportunity to comment. While such a procedure is, of course, a welcome improvement, it may not go far enough.

One proposal which would obviate some of the valid criticisms of judicial review raised by the Division For Youth is that suggested by the New York State Council of Voluntary Child Care Agencies for a juvenile review board to enforce statewide policy and standards in determinations of appropriate time for release of such offenders.

Uniformity of application is an additional advantage over release review by the more than 100 Family Court Judges of the State.

An additional approach is the creation of sentencing guidelines which establish a relationship between the acts of juveniles and the dispositions they receive. This would provide for maximum sentences, and in some cases minimum sentences, proportional to the seriousness of the offense and the prior record of the juvenile. A clear distinction would be made between minor offenders and the more violent children.

In testimony before this Commission, Joseph Gavrin, Executive Director of the Council of Voluntary Child Care Agencies, stated that combining both groups of children under the designation of juvenile delinquent has resulted in ineffective rehabilitation of the violent child and criminal stigmatization of the youngster involved in minor offenses.

John Junkers, Professor of Law at the University of Washington, in his work on behalf of the American Bar Association Juvenile Standards Project, has developed a complex system of degrees of delinquency and sentencing guidelines: "First, the types of disposition available to the juvenile court depends on the class of crime, and second, maximum sentences

are established according to the class of offense."

Rena Uviller, a lawyer with the N.Y. Civil Liberties Union, and others have expressed concern that discretion in disposition is excessive and results in decisions to incarcerate "haphazardly, often irrationally for unfair reasons". Linda Wood, of the Council of Voluntary Child Care Agencies, notes that the "purpose of the sentencing model is not to obstruct the court's rehabilitative efforts but to provide some reasonable guarantee of justice".

The National Council on Crime and Delinquency drafted a statement this past year on the subject of proportional sentencing for juveniles which states, "In the interest of simple justice it is recommended that states formally adopt a modified fixed sentence procedure for the juvenile offender. Offenses should be weighed according to their seriousness, taking into account the first offender and repeater."

Wayne Mucci, Director of the American Bar Association Juvenile Standards Project, cautions, however, that based on the complexity of the sentencing issue and on the ABA's experience of trying for over a year to establish such standards, the Legislature should create a commission to study a determinate sentencing structure rather than enacting hastily conceived legislation during the remainder of this session. Among the factors which make the issues more complex are: establishing the range of sentences based on rehabilitative, protective and deterrent factors; determining whether there should be a mandatory minimum sentence for certain offenses; and thinking through the relationship between the court and the related agencies. It is also, of course, a major departure from present court philosophy. Mr. Mucci indicates that during the time that the Legislature is studying the issue, the ABA standards will be completed and made available.

All experts agree, that at least under existing rehabilitation

treatment modalities, there are some youths who are incorrigible, yet not legally insane. Some of these youths may be sociopathic killers who feel no remorse after taking a human life. Yet, under our existing juvenile justice system, such individuals cannot be isolated from society past their eighteenth birthday.

Another legislative alternative to be considered, therefore, is to permit confinement beyond the 18th birthday either with the Division For Youth or through transfer at some appropriate age to the adult correctional system after a hearing. Further research will be required to determine whether this will constitutionally require a jury trial for the initial "guilt" determination.

I. Conclusion

This report has framed most of the major issues facing the Juvenile Justice System and will hopefully provide a stimulus for further dialogue. The Commission is considering specific legislative proposals and is in the process of drafting others.

The Commission is further considering the following issues for a future report: confidentiality of family court records, fingerprinting and photographing of juveniles charged with serious offenses, the coordination of services to juvenile delinquents, the respective functions of the prosecution and defense in judicial proceedings, and after-care and post-release programs.

A COMPENDIUM OF CHILD WELFARE LAWS

Section 1(f) of the statute creating the Temporary State Commission on Child Welfare directed us to examine "the necessity of developing a separate child welfare code which would clearly consolidate the many statutes related to children and if a code is deemed advisable to submit a proposal to the Legislature for its consideration."

A pervasive concern for children as the eventual inheritors of all that is good and had in a society and a culture is the hallmark of all civilizations - however widely their value systems and material standards may differ. Consequently, matters affecting children are implicitly and explicitly dealt with in each of the many volumes of the Laws of New York.

More pertinent to our point is the observation that the Commission staff finds statutes or parts of statutes explicitly dealing with the somewhat narrower concerns of this Commission in the State Constitution and under no less than twenty-two different volume headings of McKinney's to wit:

- Administrative Code of the City of New York
- Civil Practice Law and Rules
- Civil Rights Law
- Correction Law
- County Law
- Criminal Procedure Law
- Domestic Relations Law
- Education Law
- Estates, Powers and Trusts Law
- Executive Law
- General Municipal Law
- Indian Law
- Judiciary Law
- Labor Law
- Local Finance Law
- Mental Hygiene Law
- Not For Profit Corporations Law
- Penal Law
- Public Health Law

Social Services Law
Surrogate's Court Procedure Act
Unconsolidated Laws

We hasten to add that we make no claim that even this list is exhaustive and concede that, in some cases, the exclusions were more or less arbitrary.

It is not, of course, our intention to assert that the present carefully developed arrangement of the statutes of the State of New York ought to be extensively revised. Such a recommendation - even if we were inclined to make it (which is not the case) - would go far beyond our limited mandate.

The finding which the Commission makes is that preliminary to the development of a separate Child Welfare Code or even an assessment that such a Code is necessary, there is a need for a compilation to be made of all those statutes and parts of statutes which affect children.

Such a compendium of laws dealing with child welfare in the broadest sense is, in the Commission's view, one essential pre-requisite for a successful understanding of children's rights, children's duties and children's opportunities.

The Commission therefore proposes that it be provided with sufficient funds to continue with this vital task. It is a task of substantial proportions and complexity which would be difficult to accomplish within the very limited confines of the Commission's present appropriation.

In contemplating this project, we foresee as well that the process of compiling a compendium of child welfare laws will expose to view and legislative correction a substantial number of redundancies, inequities and outdated statutes, and parts of statutes, which might otherwise escape legislative notice, as well as inconsistencies and disparities which the Legislature may also wish to correct.

In accordance with the Commission's mandate, preliminary work is already underway on this major project.

APPENDIX A

Legislation Introduced At The Request Of The
Temporary State Commission On Child Welfare As Of May 1, 1975

DESCRIPTION OF BILL	PRINT NUMBER
Amendment of definition of "Permanently Neglected Child" to clarify that it covers all children in care of agency regardless of technical procedure which caused them to come into care	S.1971 A.5608
Eliminates need to take testimony of psychiatrist on staff of psychiatric clinic maintained by court in proceeding to terminate parental rights on ground of mental illness	S.1973 A.5609
Provides additional separate ground of "Mental Retardation" for termination of parental rights	S.5252
Requires court to include findings supporting its determination that a Section 392 order of disposition is in accordance with child's best interests	S.1970 A.6075
Provides criterion (best interests of child) in making order of disposition in permanent neglect proceeding - no presumption	S.1972 A.6068
Evidence of insubstantial and infrequent contacts by parent with child insufficient to preclude finding of abandonment or permanent neglect	S.1992-A A.5610
Extends Section 392 protections to abused or neglected children in extension of placement under Family Court Act, Section 1055	S.5254 A.8126
Extends date of Commission's Preliminary Report from March 1, 1975 to May 1, 1975	S.2402 A.3827
Provides for "adjournments in contemplation of dismissal" in child protective proceedings as means for obtaining court and agency supervision and protection without need for adjudicatory proceeding	S.5255
Extends requirement of 358-a proceeding to all voluntary placements of children in foster care for more than 14 days without regard to ADC eligibility or availability of Federal funds	S.5253

APPENDIX A CONTINUED

DESCRIPTION OF BILL	PRINT NUMBER
Reduces from 24 to 18 months, the period of foster care when child receives initial court review; eliminates privilege attaching to certain confidential communications as ground for excluding evidence in review proceeding; requires notice of court's dispositional alternatives	S.5256
Requires appointment of law guardians in foster care review proceedings and requires that law guardian or counsel otherwise retained be permitted access to agency records pertaining to child	S.5251
Increases the maximum age, from under 16 to under 18 years, at which child may be subject to Family Court jurisdiction as a PINS (effective for two years)	S.5302
Prohibits waiver of child's right to counsel in proceeding to extend placement of juvenile delinquent or PINS	S.5301

APPENDIX B

COMMISSION HEARINGS

The Temporary State Commission on Child Welfare held well publicized and well attended public hearings in eight locations between October 1974 and February 1975.

They were held as follows:

October 23, 1974 - Social Services Building, White Plains, New York

November 26, 1974 - County Planning Building, Hauppauge, L.I.

December 4, 1974 - Everson Museum of Art, Syracuse, New York

December 5, 1974 - State Office Building, Binghamton, New York

January 23, 1975 - Hall of Justice, Rochester, New York

January 24, 1975 - Donovan State Office Building, Buffalo, New York

February 6, 1975 - Legislative Office Building, Albany, New York

February 20 & 21, 1975 - State Office Building, New York, New York

In addition, the Commission held joint public hearings with the Assembly Standing Committee on Child Care on the topic of Juvenile Justice, as follows:

February 27, 1975 - City Hall, Syracuse, New York

March 6, 1975 - World Trade Center, New York, New York

April 18, 1975 - World Trade Center, New York, New York